

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1919 of 2015

and

M.P.No.1 of 2015

M/S. United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 600 013.

.. Appellant

Versus

1.Dhanasekar
2.S. Mohideen Asan Ibragim

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act 1923, to set aside the order passed in W.C.No.76 of 2012 dated 25.02.2015 by the Deputy Commissioner - I for Workmen Compensation, Chennai.

For Appellant : Mr. J. Chandran

For Respondents: R1 - Mr. R. Janagi Raja Mannar

R2 - Not ready in notice

J U D G M E N T

The award dated 25.02.2015, is sought to be set aside in the present civil miscellaneous appeal.

2. The first respondent filed an application under Section 10 of the Workmen's Compensation Act, seeking compensation. The first respondent Mr.Dhanasekar, was working as a driver with the second respondent and earning the monthly salary of Rs.10,000/- per month. On 12.12.2011 at about 12 hours, while the first respondent was driving Auto rickshaw bearing Registration No.TN-04-S-6536, met with an accident and the first respondent sustained severe head injury, shoulder fracture and multiple injuries all over the body. He was admitted in Chromepet Government Hospital and thereafter referred to Government General Hospital in Chennai. He had taken treatment as in-patient on 12.12.2011 to 21.12.2012 and thereafter, also continuing the treatment as out-patient. F.I.R., was registered in Crime No.1939/2011, the vehicle which met with an accident was insured with the appellant / United India Insurance Company

Limited. The Deputy Commissioner of Labour passed an award granting the compensation of Rs.1,69,079/-.

3. Challenging the said award of compensation, the appellant / United India Insurance Company, filed the present appeal mainly on the ground that the first respondent was not possessing a valid driving licence and the driving licence expired and not renewed. Thus, the United India Insurance Company is not liable to pay any compensation for the victim.

4. The appeal is filed mainly on the ground of liability. During the examination of the evidences, the Deputy Commissioner of Labour categorically found that at the time of accident, the vehicle was not possessing the fitness certificate and the said fitness certificate expired on 18.04.2011. Further, the driver who had driven the vehicle was not possessing the valid driving licence as on the date of accident on 12.12.2011. The driving licence of the driver expired on 23.08.2011, four months prior to the date of accident. Thus, it is established before the Deputy Commissioner of Labour, the vehicle which met with an accident was not having fitness certificate and further, the driver was not possessing valid driving licence. Therefore, the United India Insurance Company is not liable to pay compensation and the owner has to pay compensation for the victim.

5. In reliance, the learned counsel for the appellant submitted that the recent judgment of the Hon'ble Supreme Court of India in the case of Rajinder Kumar and other in C.A.No.7220 - 7221 of 2011, wherein the Apex Court made the following observations :-

"21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

"18. When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section- 5 of the Motor Vehicles Act

provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

22. We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three 16 different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the Hem Rajll case.

23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and

sufferer are one and the same person, i.e., the first respondent driver. We are, however, dealing with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings.

The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case.

The relevant provision reads as under:

"3. Employer' s liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be

present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person."

6. The Supreme Court has taken a view if there was a breach of the terms of policy then the Insurance Company could not have been held liable to satisfy the claim. There must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereon. In the absence of any such factum, when the driver was not possessing a valid driving licence, in such circumstances, the Insurance Company cannot be mulcted with liability to pay the compensation. This being the view taken by the Hon'ble Supreme Court in the judgment cited supra, this Court is of the opinion that in the present case, the vehicle which met with an accident was not possessing a valid fitness certificate and further the driver was not possessing a valid driving licence. Thus, the Deputy Commissioner of Labour has committed an error in granting award in favour of the driver/appellant.

7. Accordingly, the award dated 25.02.2015, passed in W.C.No.76/2012 is set aside and C.M.A.No.1919/2015 stands allowed. No costs. Consequently, connected miscellaneous petition is closed. The appellant is permitted to withdraw the deposited award amount with interest by filing an appropriate application and the payments are to be made through RTGS.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

AT
To

The Deputy Commissioner of Labour-I,
Chennai.

+1 CC to Mr.J. Chandran, Advocate sr 3149.

C.M.A.No.1919 of 2015

RR(CO)
SP(02/03/2021)