

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20.01.2021

JUDGMENT DELIVERED ON: 27.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.204 of 2013

M.Perumal

.. Appellant

Vs.

1.Peer Mohideen

2.Oriental Insurance Co., Ltd.,

U.I.L. Building,

No.8, Esplanade, Chennai-108.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, against the award dated 28.03.2003 passed in W.C.No.141 of 2001 by the Workmen Compensation Commissioner-II, Teynampet.

For Appellant : Mr.N.Sivaprakasam
for Mr.S.Natanarajan

For Respondents

For R2 : Mr.S.Arunkumar

For R1 : R1 died, steps not taken.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against dismissal of the claim petition by award dated 28.03.2003 made in W.C.No.141 of 2001 by the Workmen Compensation Commissioner-II, Teynampet.

2. The appellant herein is the injured / petitioner, who filed W.C.No.141 of 2001 before the Tribunal claiming compensation from the respondents, for the injuries sustained by him.

3. After full trial, the labour Court Tribunal awarded compensation for a sum of Rs.1,22,245/- and directed the 1st respondent / owner to pay the award amount to the appellant / petitioner therein, as he has not possessed valid batch to drive the mini lorry, at the time of accident.

4. Aggrieved by the order, the appellant / injured preferred this appeal. R1 died, steps not taken and R2 represented through his counsel.

5. As per the submissions made by the appellant, the Mini door Lorry bearing Reg. No.TN.72 A.0579, belongs to the 1st respondent, and he was working as driver for monthly salary of Rs.2,000/-. On 28.10.1998, at about 5.30 p.m., while driving the vehicle, near Dash prakash hotel, the vehicle met with an accident and thereby the appellant sustained grievous injuries and immediately admitted in the hospital and the F.I.R. was also lodged against him. Even after the treatment, he had sustained, 60 % of partial disablement and not able to drive the vehicle, so he claimed compensation before the Workmen Compensation Commissioner-II, Teynampet.

6. The learned counsel for the 2nd respondent / insurance Company denied the employer and employee relationship between the appellant and the 1st respondent, and he further contended that the appellant possessed only a LMV driving licence for light motor vehicle, but not possessed 'Batch' endorsement to drive the goods vehicle, as there is a violation of the policy rules, he is not liable to pay the compensation, eventhough, vehicle is insured with the 2nd respondent.

7. Before the trial Court, the appellant / petitioner was examined as P.W.1., and two doctors were examined as P.W.2 and P.W.3. To prove his claim, he relied documents from Ex.P.1 to Ex.P.10.

8. According to the appellant, he has worked as driver under the 1st respondent and possessed valid licence to drive the vehicle and the vehicle was also insured with 2nd respondent. But, the trial Court without appreciating this fact, erroneously fixed the liability to pay the compensation against the 1st respondent / owner and relieved the 2nd respondent / insurance company from its liability.

9. The learned counsel appearing for the 2nd respondent / Insurance Company submits that since the petitioner has not possessed licence to drive the goods vehicle, trial Court rightly exempted from paying compensation to the appellant / injured.

10. But, at the same time of arguments, the learned counsel for the appellant submitted that though he possessed driving licence to drive the LMV vehicle, the Mini door lorry is also less than 7500 kgs, so he need not possess 'Batch' endorsement to drive the goods vehicle for that he relied on the judgment of the Hon'ble Supreme Court in the case of "

Thazhathe Purayil Sarabi & Ors. v. Union of India & Anr." reported in 'AIR 2009 SUPREME COURT 3098'.

11. On a perusal of the above referred case, the apex Court elaborately discussed about the types of the vehicle and also concluded that if the person possessed licence to drive the LMV vehicle also entitled to drive the transport vehicle which comes below 7500 kgs. So, the special authorisation like batch is not necessary to drive the unladen vehicle which is less than 7500 kgs. In the instant there is no evidence on the side of the respondent that Mini door lorry is more than 7500 kgs. Merely on technical grounds the 2nd respondent / Insurance Company may not exclude from its liability. The manner of the accident, employer and employee relationship between himself and the 1st respondent, and the nature of the injuries sustained by the appellant and the partial disablement has also been proved by the appellant through the FIR and medical reports, with the help of the two Doctors, who were examined as P.W.2 and P.W.3.

12. Therefore, on considering all these documents, the trial Court rightly arrived a compensation, which caused no interference by this Court.

13. As discussed above, the LMV licence hold by the appellant is sufficient, which does not require special authorisation 'Batch'. Therefore the objection raised by the 2nd respondent is unsustainable. The trial Court finding with regard to the fixation of liability on the 1st respondent is also liable to set aside. To that effect, the trial Court's finding is set aside.

14. Accordingly, the Civil Miscellaneous Appeal is allowed directing the 2nd respondent to pay the award amount with interest at the rate of 7.5 % from the date of the accident till the date of realisation with costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rri

To

1.The Workmen Compensation Commissioner II
Teynampet Chennai.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Arunkumar, Advocate SR.4807
+1cc to Mr.S.Natanarajan, Advocate SR.4409

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VSN II (CO)
CB(19/03/2021)



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