

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1058 of 2018

M.Manoj Prabhakaran

...Appellant/Petitioner

Vs.

1. M/s.Grupo Cosmos India (Pvt) Ltd.,
Rep by its Authorized Officer,
MT.Drum Vishnu Priya Nagar,
Nellikuppam Road,
Guduvancherry, Chennai 603 302.

2. M/s.Adeco India Private Limited,
1st Floor, No.147, RCC Building,
G.N.Chetty Road,
T.Nagar, Chennai 600 017.

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the order of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-II), Teynampet, Chennai 600 006 in E.C.No.90 of 2017 dated 19.07.2017, dismissing the application filed by the applicant herein for compensation under the Workmen's Compensation Act.

For Appellant : M/s.Usha Ramman

For Respondents : M/s.T.S.Gopalan & Company

J U D G M E N T

The order dated 19.07.2017, passed in E.C.No.90 of 2017, is under challenge in the present civil miscellaneous appeal.

2. The learned counsel for the appellant mainly contended that the appellant was employed under the first respondent Company and he met with an accident on 30.07.2016, when he was working in a machine at Unit No.02. The appellant sustained crush injury with skin and muscle loss over the thenar region right hand displaced fracture right thumb, crush injury with skin loss right hand middle finger terminal phalanx region.

3. It is contended that the Deputy Commissioner of Labour committed a basic error even in considering the date of accident. The learned counsel for the appellant contended that

the insurance policy was effected with effect from 02.08.2016 and therefore, there is no coverage in respect of the accident occurred prior to 02.08.2016. In the present case, the accident occurred on 30.07.2016.

4. The learned counsel for the respondents raised an objection that once an ESI premiere is paid on behalf of the employee, the ESI Corporation is liable to pay compensation and the respondent company is not liable. However, the ESI Corporation is not a party before the Deputy Commissioner of Labour and further, there is a dispute regarding the date of insurance policy. The policy which enclosed by the appellant reveals that the policy was given effect to from 02.08.2016, as far as the appellant is concerned.

5. However, the learned counsel for the respondents denies the same, but, the respondents have not produced any proof to establish that prior to 02.08.2016, the policy was in force. However, all these factual aspects cannot be adjudicated in the present appeal, in view of the fact that the Deputy Commissioner of Labour has committed an error even in respect of recording the date of accident. The ESI Corporation was not impleaded as a party respondent and all the documents are also not adjudicated by the Deputy Commissioner of Labour.

6. In view of the fact that there are factual errors and necessary parties are not impleaded and further, the respondents also have not produced any documents to establish that there was an insurance coverage as on the date of accident on 30.07.2016, this Court is of the opinion that the case is to be remanded back to the Deputy Commissioner of Labour for re-trial.

7. In this view of the matter, the order dated 19.07.2017, passed in E.C.No.90 of 2017 is set aside. The case is remanded back to the Deputy Commissioner of Labour, Teynampet for re-trial by permitting the parties to file additional documents or by impleading the parties, if necessary, and adjudicate the matter on merits and in accordance with law by affording opportunity to all the parties.

8. Accordingly, C.M.A.No.1058 of 2018 stands allowed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour-II),
Teynampet, Chennai 600 006

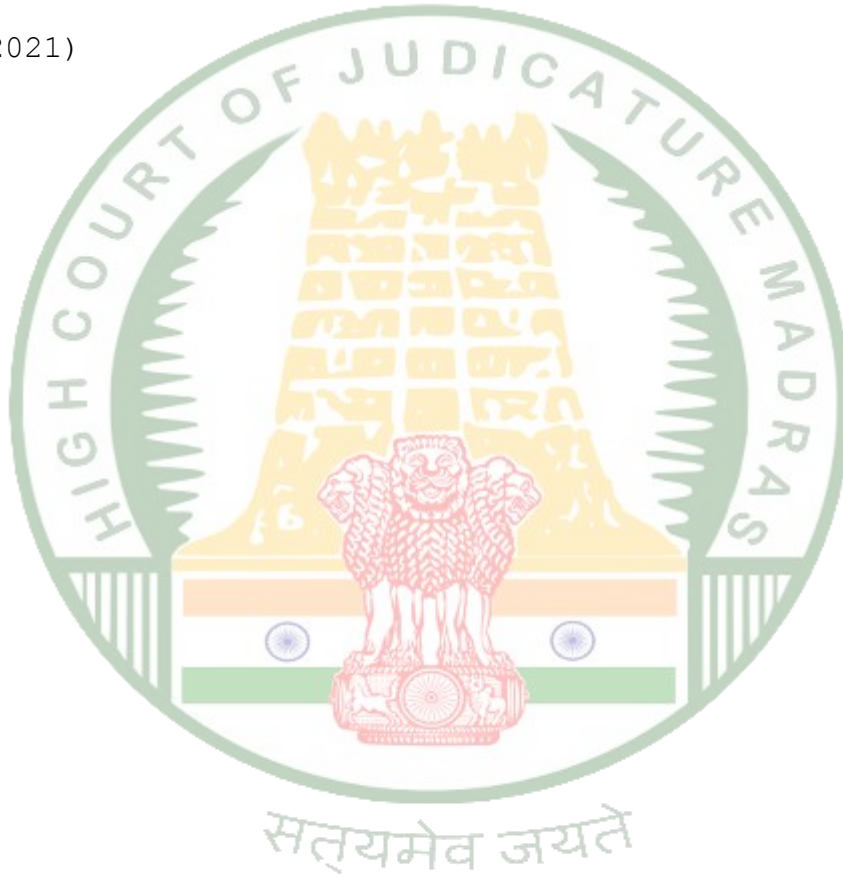
+1 CC to M/s. Usha Ramman, Advocate sr 5269.

+1 CC to M/s. T.S. Gopalan & Co, sr 4787.

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SP(01/03/2021)



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