

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.633 of 2013
and M.P.No.1 of 2013

United India Insurance Company Limited,
I Floor, TKM Complex, No.46-51, Katpadi Road,
Vellore - 632 004.

.. Appellant

Vs.

1.K.Murugesan

2.J.Viswanathan

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 (1) of the Workmen's Compensation Act, 1923, praying to set aside the award dated 04.11.2009 in W.C.No.102/2005, on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour - I, Chennai and reduce the award by a substantial margin as per merits.

For Appellant : Mr.G.Udayashankar

For Respondents : No Appearance

J U D G M E N T
सत्यमेव जयते

The appellant herein is the second respondent in W.C.No.102/2005 filed by the first respondent claiming compensation for the injuries sustained by him in the accident happened on 24.01.2004, while he was employed as a workman in the Auto bearing registration No.TN-23H-9218, belonging to the second respondent herein and insured with this appellant. The first respondent/owner not contested the case.

2. After full trial, the Commissioner of Labour awarded compensation in favour of the claimant directing the Insurance Company to pay the award amount. Aggrieved by that, the Insurance Company has preferred this appeal.

3. Points for consideration:

(i) Whether the Commissioner of Labour erroneously appreciated the evidence of Doctor and fixed the disability and awarded compensation in favour of the claimant?

(ii) Whether the Commissioner of Labour has erred in concluding that the accident arose during the course of his employment?

4. As per the submission made by the learned counsel for the appellant, the claimant was not employed under the second respondent herein and also denied the manner of the accident as well as the injury sustained by the claimant, but the Commissioner of Labour erroneously appreciated the evidence of the Doctor and awarded the compensation. So, he prays to set aside the order passed by the Commissioner of Labour.

5. Notice was served and there is no representation for the respondents. On perusal of the records before the Commissioner of Labour, the claimant was examined as PW.1 and the documents were marked as Exs.P1 to P3 and the owner of the Auto remained ex-parte and there is no oral and documentary evidence on the side of the Insurance Company. To prove the accident, the claimant relied upon the documents Exs.P1 to P3.

6. The learned counsel for the appellant pointed out that there was no FIR lodged at the time of the accident and hence, the claimant is not entitled to claim the compensation. If really the claimant was not employed under the second respondent herein, he would have raised objection before the Commissioner of Labour. But the owner of the vehicle/second respondent herein remained ex-parte and not submitted any objection itself, which amounts to the admission of the employer-employee relationship between himself and claimant/first respondent herein. Admittedly, at the time of the accident, the auto was owned by the second respondent herein and insured with this appellant. Even though no FIR was filed to prove the said accident, it is clear that the claimant was employed as a worker under the second respondent. To prove the injury as well as the loss of earning capacity, the claimant relied on the documents Ex.P3-disability certificate as well as Ex.P1- discharge summary and the same also supported with the evidence of the PW.2-Doctor. As per the evidence of PW.2, he has sustained fracture at KMC Hospital, Vellore. In spite of the treatment, there was a shortening of "2.00 c.m. of left leg". So he certified 30% disability and the claimant was employed as a salesman in the load auto.

7. Considering all these facts, the Commissioner of Labour, rightly awarded the compensation. Thus, the claimant proved the claim before the Commissioner of Labour and rightly awarded the compensation. Based upon the oral and documentary evidence, the Commissioner of Labour, allowed the claim of the petitioner, which calls for no interference by this Court. Accordingly, the substantial question of law is answered.

8. Accordingly, this appeal is dismissed, the appellant is directed to deposit the award amount with interest at the rate of 12 % from the date of the accident till the date of realization.

9. With regard to other findings, the order passed by the learned Deputy Commissioner of Labour-I, Chennai, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ub

To

The Commissioner for Workmen's Compensation,
Deputy Commissioner of Labour - I, Chennai.

+1cc to Mr.G.Udaya Shankar, Advocate, S.R.No.17782

सत्यमेव जयते

C.M.A.No.633 of 2013

WEB COPY

GSM(CO)
KM(23/04/2021)