

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20.01.2021

JUDGMENT DELIVERED ON: 25.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.983 of 2013

M/s.National Insurance Corporation Ltd.,
Division Officer - 1,
2nd floor, Saradha College Road,
Salem-7.

.. Appellant/
2nd Respondent

Vs.

1.K.Chandrasekeran

.. Respondent/
Petitioner

2.A.Kumaresan

.. Respondent/
1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the order passed in W.C.No.750 of 2005 dated 31.05.2012 on the file of the learned Commissioner for Workmen Compensation (Deputy Commissioner of Labour, Salem).

For Appellant : Mr.M.L. Ramesh
for Mr.N.B.Surekha

For Respondents
For R1 : Mr.S.P.Yuaraj

For R2 : Ex-parte

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J U D G M E N T

The appellant herein is the second respondent in W.C.No.750 of 2005 filed by the first respondent herein / injured, claiming compensation for grievous injuries sustained by him, due to the accident happened on 29.01.2005, while he was driving an auto belongs to the second respondent herein / owner, under whom he was employed.

2. After full trial, the learned Commissioner for Workmen Compensation (Deputy Commissioner of Labour, Salem) awarded a compensation a sum of Rs.83,641/- in favour of the first respondent/ injured. Aggrieved by the order, the appellant / insurance company preferred this appeal. R1 represented through his counsel and R2 remained ex-parte.

3. As per the contention of the appellant, on the date of the accident, the first respondent / injured was not employed under the second respondent herein / owner, though the auto bearing Reg. No.TN 58.6226 belongs to the second respondent. Further, he contended that there is a lessee and lessor relationship between the first respondent and the second respondent and there is no employer and employee relationship between them, and the auto was driven by the injured for rent.

4. But the learned counsel for the first respondent / injured submitted that the said auto belongs to the second respondent and on the date of the accident the first respondent driven the vehicle as driver under the second respondent, thereby he denied the lessor and lessee relationship between them.

5. On a perusal of the records, it reveals that, Ex.P3 - Auto belongs to the second respondent herein and insured with the appellant's company on the date of the accident. The appellant also admits that the vehicle was also insured with them but denied the relationship between the injured and owner as employer and employee. As rightly pointed out by the first respondent herein, the owner of the vehicle remained as ex-parte in the entire proceedings. He has not appeared nor he produced any evidence to disprove the first respondent's contention. Thereby, he impliedly admits the relationship between the first and the second respondent as employer and employee. Therefore, eventhough no evidence was adduced on the side of the injured to prove his fact, but the conduct of the second respondent supports the contention of the injured.

6. Further, on the side of the appellant, there is no material evidence adduced to establish lessor and lessee relationship between the first and the second respondent herein. Therefore, the objection raised by the appellant that there is no employer and employee relationship between the first and the second respondent herein is unsustainable one. The findings to that effect by the Tribunal are also a sustainable one. The appellant also contended that the injured was not possessed badge to drive the auto and he obtained licence only to drive the LMV vehicle. The injured also admits that he has possessed driving licence for LMV vehicle and not possessed badge to drive

the heavy vehicle. The appellant further submits that since the injured not possessed valid badge, it is in violation of the policy, thereby they are not liable to pay the compensation.

7. As rightly pointed out by the first respondent / injured counsel, he possessed valid licence to drive LMV but badge was not obtained for that purpose he should not put into hardships because the vehicle was insured with the appellant / Insurance Company on the date of the accident. Hence, the appellant is to be directed to pay the compensation. But, the trial Court erroneously directed the 2nd respondent to pay the compensation on considering the non-possession of the badge by the injured.

8. It is just and a necessary, that the appellant / Insurance company should pay the compensation to the first respondent / injured. The counsel for the first respondent relied on the judgment of the Hon'ble Supreme Court in the case of " Mukund Dewangan v. Oriental Insurance Company Limited" reported in '(2017) 14 Supreme Court Cases 663" and relied on the following:

"if the driver hold a driving licence to drive class of light motor vehicle" as provided in S.10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg".

9. The learned counsel for the 1st respondent argued that if the driver holds a licence for Light Motor Vehicle, it would also specifically means that he is authorised to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500kg or a motor car or tractor or roadroller, the "unladen weight" of which, as the case may be does not exceed 7500 kg". Based on the contention, the LMV, also includes transport vehicle with weight not exceed 7,500 kg. So, as per the contention of the first respondent, the auto is a transport vehicle and the vehicle does not weighs more than 7500 kg. Therefore, the policy of the liberalisation became necessary with the introduction of new era types of vehicle as amended by "Motor Vehicle Act, 1988 - S.10 (as amended by Amendment Act 54 of 1994) - Amendment of Form 4 (Form of application for licence to drive a motor vehicle) W.e.f.28-3-2001 -Effect, if any, on exclusion of transport vehicle of light motor vehicle class from the purview of Ss.10(2)(d) and 2(41) of the Act - Endorsement in the LMV class"

10. As per the amendment, if the driver possessed valid licence to drive LMV, there is no necessary to obtain special

endorsement to drive transport vehicle, which squarely applicable to the facts of the present case.

11. As discussed above, at the time of accident, the first respondent possessed the valid licence to drive LMV and the vehicle was insured with the appellant herein. So, the appellant is liable to pay the compensation as awarded by the learned Commissioner for Workmen Compensation (Deputy Commissioner of Labour, Salem).

12. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour, Salem) is confirmed. Hence, the appellant is directed to pay the compensation with subsequent interest at the rate of 12% from the date of accident till the date of realisation. With costs. Time to deposit award amount within a period of four weeks from the date of receipt of a copy of the judgment.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rri

TO

1. The Commissioner of Workmen Compensation,
(Deputy Commissioner of Labour) Salem

+1cc to Mr.SP. YUVARAJ, Advocate, S.R.No.3963

+1cc to Mr.NB.SUREKHA*, Advocate, S.R.No.4112

CA (CO)
SM/01/03/2021

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