

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 19.01.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.296 of 2016
and
C.M.P.No.2393 of 2016

The United India Insurance Company Ltd.,
No.24, Whites Road,
Chennai ? 14.

.. Appellant

Versus

1.K. Nagalingam
2.M. Padmavathi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act 1923, against the order of the Deputy Commissioner of Labour - 2, Chennai dated 24.08.2015 made in W.C.No.328 of 2010.

For Appellant : Mr. D. Bhaskaran

For Respondents : R1 - Notice sent - No such person
R2 - No Appearance

J U D G M E N T

The award dated 24.08.2015 passed in W.C.No.328/2010 is under challenge in the present civil miscellaneous appeal. The first respondent one Mr. Nagalingam, was working as a driver under the second respondent- M. Padmavathi. He was drawing a monthly salary of Rs.7,500/- and he was aged about 48 years at the time of accident. The first respondent was working as a driver in Ashok Leyland Tanker Lorry bearing Registration No.TN-04-AA-9909. On 01.04.2009, at about 11.30 hours, the lorry met with an accident and the first respondent sustained serious injury, during the course of employment. The claim petition was filed and the Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences. The Deputy Commissioner of Labour relying on the evidence submitted by the claimants fixed the monthly salary of Rs.4,000/- and the Loss of Income is fixed as 35%. The accident occurred on 01.04.2009 and therefore fixation of salary as Rs.4,000/- per month cannot be construed as excessive and in fact it is a reasonable amount fixed for the purpose of quantifying the compensation.

2. The substantial question of law raised in the appeal on hand, whether, in the absence of any materials, the Deputy Commissioner of Labour is right in arriving at the conclusion that the accident occurred during the course of employment. It is further raised that it is the case whether the claimant is coming under the definition of the workmen as defined under Section 2N and under Section 3 of the Act. In this regard, the Deputy Commissioner of Labour, categorically made a finding that the driver was possessing a valid driving licence and the lorry is met with an accident was also having a valid fitness certificate. It is further found that the second respondent owner of the vehicle are the appellant Insurance Company had established that the driver had not met with an accident during the course of employment and no such evidence are proved and it is submitted by the opposite party in the application. In the absence of any evidence are proved to establish that the accident was not occurred during the course of employment. The Deputy Commissioner of Labour is right in arriving the conclusion that the accident occurred during the course of employment as established by the claimant before the Deputy Commissioner of Labour.

3. This being the factum, this Court do not find any acceptable ground for the purpose of considering the appeal. Accordingly, the award dated 24.08.2015 passed in W.C.No.328/2010 stands confirmed. Consequently, CMA.No.296/2016 is dismissed. No costs. Consequently, conned miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AT

To

The Deputy Commissioner of Labour-II,
Chennai.

WEB COPY

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KV(CO)
CSR 19.03.2021