

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

C.M.A.No.792 of 2016

and

C.M.A.No.6417 of 2016

United India Insurance Company Limited,

No.826, Tarapore Towers,

Anna Salai,

Chennai - 600 002.

.. Appellant/2nd Respondent

Vs.

1.Mr.Farook Basha .. 1st Respondent/Appellant

2.Mr.T.S.Sekar .. 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 (1) of the Employees' Compensation Act, 1923 against the order dated 28.09.2015 made in W.C.No.121 of 2010 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour I) Chennai.

For Appellant : M/s.R.Rathnathara

For Respondents : Mr.K.Varadhakamaraj for R1

R2 - Notice sent - vacated

J U D G M E N T

The Award dated 28.09.2015 passed in W.C.No.121 of 2010 is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial questions of law raised in the present appeal are as under:

"1.Whether the learned Commissioner has erred in misconstruction of evidence on record amounting to perversity in law?

2.Whether the order of the learned Commissioner holding the Appellant liable despite existence of a valid statutory defence under Section 3 (1) (b) (i) of Employee's Compensation Act is tenable in law?

3.Whether the conclusion of the learned Commissioner in holding the Appellant liable ignoring the binding decision of this Hon'ble Court under similar circumstances is sustainable?

4.Whether the claim of the first respondent/applicant, who is guilty of gross violations of mandatory provisions in MV Act 1988 is maintainable in law?

5. Whether the extent of loss of earning capacity as determined by the learned Commissioner is highly arbitrary and opposed to well evolved scientific and legal principles and thus perverse in law warranting interference in appeal?"

3. The learned counsel appearing on behalf of the Appellant mainly contended that the accident was not disputed. However, the documents marked by the appellant / Insurance Company had not been considered by the Deputy Commissioner of Labour, despite the fact that the Doctor, who was examined also deposed that the workmen was under the influence of alcohol at the time of driving the vehicle.

4. To substantiate the above said ground, it is contended that even during the cross-examination, the Doctor has stated that in the Accident Register maintained by the Government General Hospital, there is a mentioning that the respondent/claimant was under the influence of alcohol, no surgery was performed and only consolidated treatments were given to the victim. In spite of the fact that the appellant/Insurance company though filed five documents regarding the accident register, copy of the charge-sheet and investigation report, the said documents were not considered by the Deputy Commissioner of Labour. Contrarily, the Award states that those documents were not further examined through any other witness.

5. The accident occurred on 04.05.2010 at about 13.00 hours while the respondent/claimant was driving the Autorickshaw bearing Reg No.TN-09-D-3252 at the Junction of E.V.R Salai and New Avadi Road signal opposite to Pachaiyappas College, the respondent/claimant lost control over the said Autorickshaw and dashed against a stationary car bearing Reg.No.TN-01-AK-1060. Thus, he filed an application.

6. Soon after the admission of the respondent/claimant in the hospital, entry was made in the Accident Register in the Government General Hospital. In the said Register the Doctors have clearly mentioned that the respondent/claimant was under the influence of alcohol. The factum was further deposed before the Deputy Commissioner of Labour by the Doctor for cross-examination.

7. This being the documents marked, which clarifies that the respondent/claimant was under the influence of alcohol at the time of accident. The Deputy Commissioner of Labour, has committed an error in finding that further witnesses are to be examined for the purpose of establishing these facts. The Deputy Commissioner of Labour arrived a finding that the appellant/insurance Company had not established the fact regarding the consumption of alcohol by the

respondent/claimant. However, this Court is able to find out that the Accident Register, Charge Sheet and Investigation Reports were filed and even in the Accident Register maintained by the Government General Hospital, it is clearly mentioned that the respondent/claimant was under the influence of alcohol and a Doctor, during cross-examination also deposed that the entries were made in the Accident Register and the endorsement was also made for the entry.

8. This being the factum established, the Deputy Commissioner of Labour has committed an error in fixing the liability on the appellant / Insurance Company. Once it is established that the driver of the vehicle is met with an accident and driven with the influence of alcohol, then it amounts to violation of conditions stipulated in the policy and therefore, the respondent/claimant is not entitled for compensation, even under the statute.

9. This being the factum, the Award dated 28.09.2020 passed in W.C.No.121 of 2020 is set aside and C.M.A.No.792 of 2016 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant / Insurance Company is permitted to withdraw the Award amount by filing an appropriate application before the Competent Authority and all payments are made through RTGS.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

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

Copy to: The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.8225.

+1cc to Mr.R.Rathna Thara, Advocate, S.R.No.8962.

C.M.A.No.792 of 2016

BS (CO)
CSR 17.03.2021