

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2583 of 2014

Aadam ... Appellant/Claimant

Vs.

1.V.Prema

2.The New India Assurance Company Ltd.,
C.S.I.Building,
Officers Line,
Vellore.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, pleaded to set aside the order dated 21.01.2013, made in W.C.No.494 of 2006 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai.

For Appellant : Mr.Sivakumar

For Respondents

For R1 : No appearance

(Private Notice sent, returned
with an endorsement
'unclaimed')

For R2 : Mr.K.Vinod

for M/s. Elveera Ravindran

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J U D G M E N T

The appellant herein is the petitioner / injured in W.C.No.494 of 2006, filed by him claiming compensation from the respondents for the injuries sustained by him, while he was served under the 1st respondent as a driver. On 21.08.2006, he met with an accident and the vehicle was insured with the 2nd respondent. But after full trial, the Commissioner for Workmen's

Compensation and Deputy Commissioner of Labour-I, Chennai, dismissed his claim. Aggrieved by the order, the appellant preferred this Civil Miscellaneous appeal.

2. Both, before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai, and also before this forum, the 1st respondent remained ex-parte. The second respondent /insurance company contested the case.

3. The learned counsel for the appellant submitted that the Tribunal dismissed the appellant's claim, by erroneously concluding that as a lessee, the appellant took the Auto belonged to the 1st respondent for a rent of Rs.100/- per day and there is no employer and employee relationship between them. But, in fact the Auto belongs to the 1st respondent and as a driver of the 1st respondent, the appellant had driven the Auto Rickshaw on the date of the accident. So, the 1st respondent is his employer, thereby he is liable to pay the compensation. To justify his claim, he relied on the documents Ex.A.1 to Ex.A.8. The learned counsel for the appellant further argued that since the 1st respondent/ owner of the vehicle remained ex-parte, this itself proves that she admits the claim made by this appellant / petitioner.

4. On a perusal of the record, it reveals that the 1st respondent remained ex-parte even before the Tribunal. The private notice sent to the 1st respondent was returned with an endorsement 'unclaimed'.

5. By way of reply, the learned counsel for the 2nd respondent contends that the 1st respondent had written a letter to the insurance company stating that the injured had taken the Auto on a daily basis and he was not working under her as a driver. The said letter was marked on the side of the 2nd respondent as Ex.R.1.

6. Ex.R.1 has not been disputed by the appellant before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai. Further the documents, Ex.P.1 to Ex.P.8 produced by the appellant are said to have been effected only after the accident and the appellant has not produced any evidence to show that he was a driver of the 1st respondent. Hence, the material produced by the appellant is not sufficient to conclude that the claim made by the petitioner deemed to be proved by him. However, he has to prove his claim with prima facie evidence. But the Tribunal Judge observed that the appellant gave a statement before the Police that he took the Auto on a daily rent basis from his owner / 1st respondent herein, which proves that the appellant has taken the auto as a lessee and not as a driver of the 1st respondent. So based upon

his own statement as well as the letter given by the 1st respondent marked as Ex.R.1, before the labour Tribunal / the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai, has rightly dismissed the appellant's claim and concluded that there is no relationship of employer and employee between the 1st respondent and the appellant. Therefore, the objection raised by the 2nd respondent is also an acceptable one.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai, is confirmed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Workmens Compensation,
Deputy Commissioner of Labour-I,
Chennai.
2. The Section Officer,
VR Section, Highcourt,
Madras.

+1cc to Mr.C. PRABAKARAN, Advocate, S.R.No.5757
+1cc to Mr.ELVEERA RAVINDRAN, Advocate, S.R.No.5960

LN(CO)
SM/01/03/2021

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