

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.889 of 2014
and CMP.No.9552 of 2017

M/s.Patriot Shipping Services,
Represented by its Managing Partner,
Mr.C.B.Bhujangaram,
New.No.6, Old No.14,
Jaffer Syrang Street,
Chennai - 600 001.

.. Appellant

Vs.

1.S.Baskar
2.A.S.Shipping Company,
Nummal,
Chennai - 600 077.
3.New India Assurance Company Limited,
No.45, Moore Street,
5th Floor, Chennai - 600 001.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, praying to set aside the order passed in W.C.No.420 of 2006, dated 20.12.2013 on the file of the Workmen Compensation, Commissioner cum Deputy Commissioner of Labour - I, is ex facie illegal, arbitrary, contrary to law.

For Appellant : Mr.A.Balamurugan

For Respondents: Mr.K.Desingh for R1
M/s.D.Hari for R2
M/s.C.Ramesh Babu for R3

WEB COPY

J U D G M E N T

The appellant herein is the respondent in W.C.No.420 of 2006, filed by the 1st respondent herein, claiming compensation for the grievous injuries sustained by him in the accident happened on 25.04.2006 when he was employed under this appellant. The second respondent herein is the Shipping Company. The third respondent herein is the Insurance Company, all were contested the case. After full trial, the Deputy

Commissioner of Labour - I, awarded compensation directing the first appellant to pay the compensation. Aggrieved by that order, the appeal is filed.

2. On seeing the facts of the case, the first respondent herein was employed under appellant Shipping Company. The nature of the job of the applicant is to clear the shipping containers at various places such as Nammal, Ennore, Madhavaram, and other places whenever directed by this appellant. While so, on 25.04.2006, at about 04.30 p.m., while, he was recording the accountability of the container items, at that time, the lift machine hit on his back. In that accident, he sustained multiple grievous injuries and he was taken to private hospital and took treatment nearly about one month and even after that treatment, he was unable to work and he sustained loss of earning capacity, so he claimed compensation.

3. On his side, the documents Exs.P1 to P8 were marked, he was examined as PW.1, Doctor was examined as PW.2. On the side of the second respondent RW.1 was examined and on the side of the Insurance Company documents are marked as Exs.R1 to R3.

4. Based upon all these documents and the facts, the Commissioner of Labour concluded that the policy only cover the road accident and would not cover the workmen compensation and hence, he directed the owner/appellant herein to pay the award amount with interest. Aggrieved, the employer approached this Court by way of this appeal.

5. The substantial questions of law that arises in the above appeal for consideration are:

"Whether the Commissioner of Labour was erred in concluding that the accident was happened in the course of the employment and directed the appellant to pay the compensation without considering the policy in the hands of the 3rd respondent."

6. The learned counsel appearing for the appellant submits that the first respondent/Injured was not employed under him at the time of the accident besides it was not happened during the course of employment but without considering the evidence, the Commissioner of Labour erroneously directed him to pay the award amount.

7. Per contra, the first respondent/injured submits that as a clerk he has done his job with regard to loading and unloading containers. While so, he met with an accident by hitting the lift machine from its behind and the said machine belongs to the second respondent and insured with the 3rd

respondent and the Commissioner of Labour rightly awarded compensation. So, he prays to dismiss the appeal.

8. On perusal of the records, the first respondent proved that the accident was happened in the course of employment with the help of documents namely, discharge summary, Exs.P1, P4 and P5.

9. But the counsel for the appellant submits that there is no complaint lodged by neither, the first respondent nor by the employer. Moreover, learned counsel also contends that the accident was not occurred in the course of his employment.

10. As rightly pointed out by the first respondent counsel, the accident was happened inside the yard and the same was also admitted by the appellant before the Commissioner of Labour, but no FIR was lodged.

11. By way of reply, the learned counsel for the appellant pointed out this fact that the accident was not happened inside the premises, so that the FIR was not lodged. But in his counter statement, he has not denied about the accident. As per the objection of the appellant, the accident was happened, while the first respondent crossed the road by talking with cell phone and it was not happened inside the premises. But there is no evidence, on the side of the appellant to prove this aspect, but as per the evidence of PW.1 and other documents proved that the accident was happened inside the yard. The Commissioner of Labour, while concluding its order directed this appellant to pay the award amount to the injured for the reason that the policy which was taken by him is only a personal accident insurance policy with medical expenses arising out of road accident. So it will not come under the workmen policy. Therefore, if any road accident met by the employee, the employer is liable to pay compensation based upon the policy. Considering that the Commissioner of Labour rightly awarded the compensation directing this appellant to pay the compensation.

12. On considering the policy, the scope is restricted only to the road accident victims not to the labourers. But, admittedly, the first respondent/injured was employed under this appellant and the accident also happened during the course of his employment inside the yard. Therefore, the appellant is liable to pay compensation not the Insurance Company. The Deputy Commissioner of Labour rightly directed this appellant to pay the compensation. Hence, the appeal as such is not maintainable in law. Accordingly, the question of law is answered.

13.Hence, this Civil Miscellaneous Appeal is dismissed. The order passed by the Commissioner of Labour is confirmed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ub

To

1.The Workmen Compensation Commissioner
cum Deputy Commissioner of Labour-I,
Chennai.

+1cc to Mr.A.Balamurugan, Advocate SR.11125

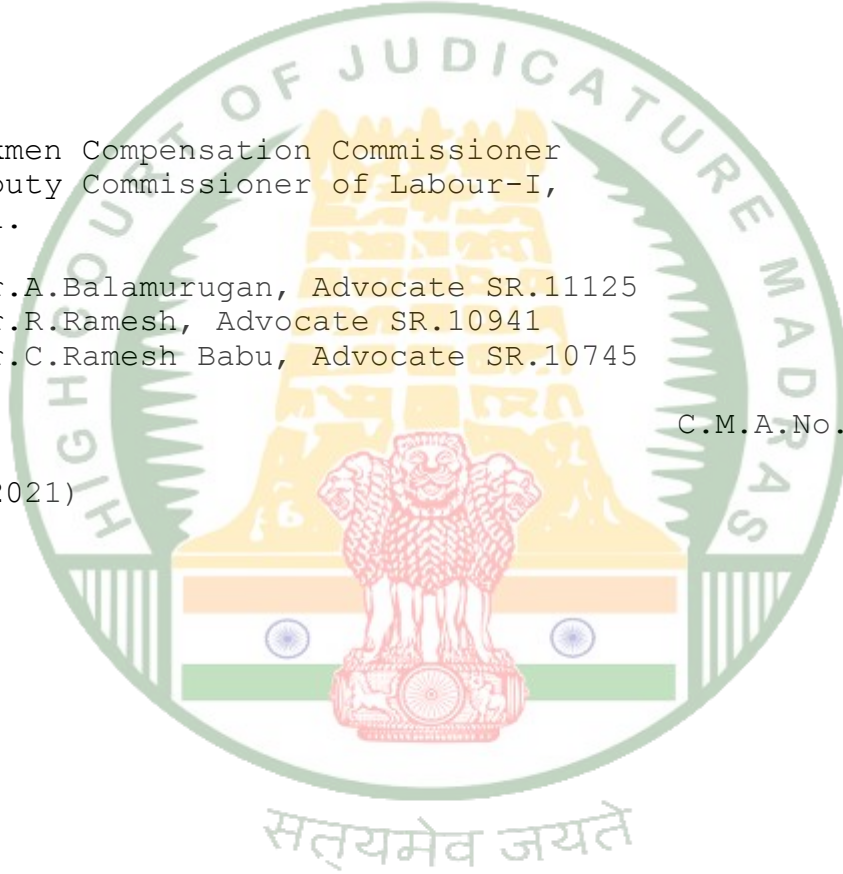
+1cc to Mr.R.Ramesh, Advocate SR.10941

+1cc to Mr.C.Ramesh Babu, Advocate SR.10745

C.M.A.No.889 of 2014

PM(CO)

CB(19/03/2021)



WEB COPY