

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2794 of 2017

Sivakumar

..Appellant/Petitioner

vs.

1.Sakthivel

2.Reliance General Insurance Company Limited,
No.5 Manandi Plaza,
Market Road,
Bangalore City.

..Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923, against the order dated 16.06.2017 made in W.C.No.372 of 2011 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

For Petitioners : Mr.M.Sivakumar

For Respondents : R1-Left

R2-Not ready in notice.

O R D E R

The Fair and Decreeal Order dated 16.06.2017 made in W.C.No.372 of 2011 passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant filed the present appeal. The application was filed by the appellant under Section 10 of the Workman Compensation Act on the ground that he was employed under the first respondent as a driver. On 03.09.2008 at about 9.00 a.m., the appellant/Sivakumar was driving the TATA 407 Mini Lorry bearing Registration No.KA-02-D-2812 belonging to the first respondent and the said lorry was insured with the second respondent/Insurance Company. The lorry met with an accident and the appellant sustained greivous injuries. The application was filed seeking compensation.

3. The accident occurred on account of the fact that the appellant turned his vehicle towards left and lost his control and dashed against a tamarind tree and the vehicle got capsized. The question arouse whether there was an Insurance Policy coverage and there was a violation in terms and conditions of the policy. The Deputy Commissioner of Labour considered the issues raised and the factum regarding the

accident was established. However, it was found that the vehicle was carrying 24 passengers which is in violation of the policy condition as well as sitting capacity approved by the competent authority. As per the Insurance Policy/Ex.B1, sitting capacity in the said goods vehicle is three. But as per F.I.R, 24 persons were travelling at the time of accident. This apart, F.I.R reveals that the driver of the vehicle is responsible for the accident. Thus, the vehicle was driven in violation of the provisions of the Motor Vehicles Act as well as the terms and conditions of the Insurance Policy were also violated. The vehicle which met with an accident was a Medium Goods Vehicle under Section 2(23) of the Motor Vehicles Act. In view of the fact that at the time of accident, nearly about 24 passengers were travelling to participate in a Marriage function and the driver of the vehicle/appellant violated the provision of the Motor Vehicles Act and also violated the terms and conditions of the policy, the Deputy Commissioner of Labour fixed the liability on the owner of the vehicle. When there is a clear violation of the provisions of the Motor Vehicles Act and the terms and conditions of the Insurance Policy were also violated, the liability to pay the compensation was fixed on the owner of the vehicle under whom the claimant was working during the relevant point of time. In the present case, the appellant was employed by the first respondent, who is the owner of the vehicle. Thus, the Deputy Commissioner of Labour is right in fixing the liability on the owner of the vehicle. This Court do not find any infirmity or perversity as such in deciding the issue. The question of law raised whether exoneration of Insurance Company from liability is answered in favour of the Insurance Company as the Deputy Commissioner of Labour rightly fixed the liability on the owner of the vehicle. Accordingly, the award dated 16.06.2017 passed in W.C.No.372 of 2018 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ssb
To

Commissioner for Workmen's Compensation and Deputy
Commissioner of Labour, Salem.

+1 CC to Mr.C.Prabakaran, Advocate sr 5135.

C.M.A.No.2794 of 2017

SSD(CO)
SP(03/03/2021)