



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2021

Delivered on : 22.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) No.1165 of 2013

and

M.P. (MD)No.1 of 2013

WEB COPY

M/s.Bajaj Allianz General Insurance
Company Ltd.,
6/11, III Floor,
Government Arts College Road,
Coimbatore.

... Appellant / 2nd Respondent

Vs.

1.Thirumalai

... 1st Respondent/Petitioner

2.K.Pappa

... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the award dated 31.10.2012 made in W.C.No.325 of 2006, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No appearance

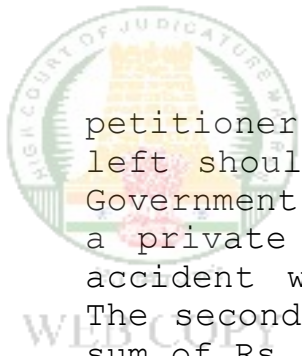
JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 31.10.2012 made in W.C.No.325 of 2006, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition. The first respondent herein / claimant filed a petition in W.C.No.325 of 2006.

3.Brief substance of the petition in W.C.No.325 of 2006, is as follows:-

The petitioner was working as a load man in a vehicle bearing Registration No.TN-48-E-5828 that belonged to the first respondent. On 22.05.2006, when the petitioner was engaged as a load man, the vehicle capsized and met with an accident. The



petitioner sustained grievous injuries. There was fractures on the left shoulder and left knee. The petitioner was admitted in the Government Hospital, Tiruchirappalli and then he took treatment in a private hospital. The age of the petitioner at the time of accident was 48 years and he was earning Rs.6,500/- per month. The second respondent is the insurer and the petitioner claimed a sum of Rs.5,00,000/- as compensation.

4.Brief substance of the counter of the first respondent in W.C.No.325 of 2006, is as follows:-

The petitioner has to prove the case. The age, income, nature of injury, disability, medical expenses, mode of accident and period of treatment are all denied. The petitioner was irregular in attending the work. The vehicle was insured with the second respondent and the first respondent has to be exonerated.

5.Brief substance of the counter of the second respondent, in W.C.No.325 of 2006, is as follows:-

There is no relationship of employer and employee between the first respondent and the petitioner. The petitioner travelled in the vehicle only as a gratuitous passenger. There was no coverage for the petitioner. The age, income and profession are all denied. The nature of injury, period of treatment, permanent disability and the medical expenses are all denied. The manner of accident is denied. The accident is not in the course of employment.

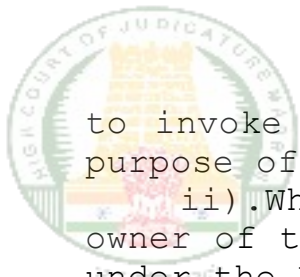
6.On the side of the petitioner, one witness was examined and seven documents were marked. On the side of the respondents, one witness was examined and one document was marked.

7.The Deputy Commissioner of Labour, Trichy, after considering both sides, awarded a sum of Rs.99,036/- as compensation. Against the award the second respondent/ appellant has preferred this appeal on the following grounds:-

The injured claimant was a gratuitous passenger in a goods vehicle and the appellant is not liable to pay compensation. The claimant and others did not travel as load man or workman. The injured was not directly employed by the owner of the vehicle. The claim under the Workmen compensation Act was not maintainable. More than 12 passengers travelled in the insured vehicle which was a violation of the policy conditions. Seating capacity of the vehicle is only for two. The claimant is not entitled to compensation under Section 147 of the Motor Vehicles Act.

8.The learned counsel for the appellant has raised the following questions:

i).Whether the learned Commissioner for Workmen Compensation has committed any error by holding that the injured claimant who was not directly employed by the owner of the vehicle is entitled



to invoke the provisions of the Workmen Compensation Act for the purpose of claiming compensation?

ii).Whether the person who was not engaged as a workman by the owner of the vehicle directly is covered by the defence of workman under the Workmen Compensation Act?

iii).Whether a person who had travelled in the goods carrier as an unauthorized passenger and not as the workmen employed by the owner of the vehicle is covered by the policy of insurance under Section 147 of Motor Vehicles Act?

iv).Whether learned Commissioner for Workmen Compensation is competent to direct the insurance company to indemnify the owner of the vehicle when there is no proof that the injured claimant had travelled in the goods carrier in his capacity as the load man of the owner of the vehicle?

9.Name of the respondents was printed and called upon. Though sufficient opportunity was given none appeared for the respondents. Hence, no oral argument on the side of the respondents is recorded and the order is passed on merits.

10.The first respondent in his counter has stated that the claimant was working as a load man for the past six months, but, he was irregular in attending the work. There was no rebuttal evidence. The driver of the vehicle was not examined, who are all the persons who travelled as gratuitous passengers and who are all travelled as load man were not clearly proved by the Insurance Company.

11.Though the appellant has raised four questions under the caption "substantial questions of law", question Nos.1, 2 and 4 are only questions of facts and not questions of law. The applicability of Section 147 of the Motor Vehicles Act to the injured is really a question of fact and not a question of law. In the above circumstances, there is nothing sufficient enough to interfere in the order of the Deputy Commissioner of Labour, Trichy. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls



To

1.The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Trichy.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-29970[F] dated
22/09/2021)

C.M.A(MD) No.1165 of 2013
22.09.2021

DJ(CO)
SB(05.10.2021) 4P 5C