



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.1352 of 2011

M.P. (MD) .No.1 of 2011

WEB COPY

The Branch Manager,
New India Assurance Company Limited,
913, Catholic Centre Main Road,
Kovilpatti-628 501.

... Appellant/2nd Respondent

vs.

1.M.Anand

... 1st Respondent/ Petitioner

2.T.Kumar

... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, to set aside the order dated 25.07.2011 made in W.C.No.127 of 2005 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai.

For Appellants : Mr.B.Vijay Karthikeyan

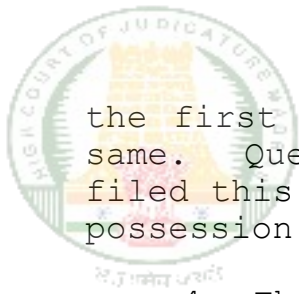
For Respondents : No appearance

J U D G M E N T

The appellant filed this appeal to set aside the order dated 25.07.2011 passed in W.C.No.127 of 2005 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai.

2. The first respondent was employed as driver by the second respondent in Eicher Goods van bearing Registration No.TN-04-Y-2811. On 24.05.2003, the first respondent loaded the Cinema Shooting goods in the said Van, which proceeded from Courtalam to Chennai. At about 10.00 a.m., near Gundooosi Mill in Rajapalayam-Srivilliputhur Main Road, a lorry bearing Registration No.TAO 7931 came in a rash and negligent manner and dashed against the van, as a result of which, the first respondent sustained grievous injuries. Hence, the first respondent filed W.C.No.127 of 2005 before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai, claiming compensation for the injuries sustained by him.

3. The Deputy Commissioner of Labour, Madurai, after analysing the oral and documentary evidences, awarded a sum of Rs.1,61,930/- (Rupees One Lakh Sixty One Thousand Nine Hundred and Thirty Only) to

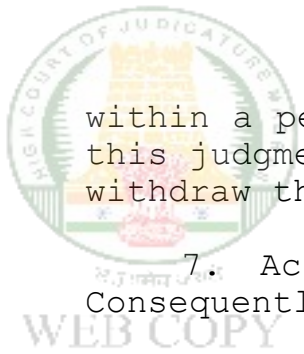


the first respondent and directed the Insurance Company to pay the same. Questioning the liability fixed on them, the appellant has filed this appeal on the ground that the first respondent was not in possession of valid driving licence on the date of the accident.

4. The learned counsel appearing for the appellant submitted that the Tribunal failed to consider the fact that on the date of accident, the first respondent was not having valid license to drive the vehicle and the insurance policy stands in the name of one K.Vellaisamy. The first respondent/claimant failed to prove the employer-employee relationship. He relied on the judgment of the Honble Supreme Court in the case of **National Insurance Company Limited. v. Vidhyadhar Mahariwala reported in 2008 ACJ 2860** and contended that the said judgment is not applicable to the case on hand.

5. The first respondent / claimant has produced the copy of the driving licence, which were marked as Exs.P8 and P9. A perusal of the Ex.P8 and P9 shows that the first respondent was not having valid driving license on the date of accident. It is a clear case of violation of Insurance Policy. In the Judgment relied on by the learned counsel for the appellant in **BELI RAM vs. Rajinder Kumar and other**, it is observed that while protecting the rights of the claimant, it has to be seen as to whether the claimant is having valid license on the date of accident, and if, the claimant is not having valid licence, he ought to be prosecuted under the Motor Vehicles Act. The Insurance Company cannot be made liable to pay the compensation. In the present case on hand, though the Deputy Commissioner of Labour, Madurai has observed in his orders that the first respondent was not holding valid driving licence on the date of accident, directed the Insurance Company to pay the compensation. The evidence adduced by the first respondent / claimant itself shows that he was not in possessing of valid driving licence on the date of accident. In such circumstances, this Court is inclined to interfere with the orders passed by the Deputy Commissioner of Labour, Madurai. The liability fixed on the Insurance Company is alone hereby set aside. The quantum of compensation fixed by the Deputy Commissioner of Labour, Madurai is not challenged in this appeal and it is hereby confirmed. The employer/owner of the vehicle is liable to pay compensation to the first respondent / claimant.

6. Hence, the order passed in W.C.No.127 of 2005 by the Deputy Commissioner of Labour, Madurai is set aside with regard to the liability of the Insurance Company and the second respondent /owner of the vehicle is directed to pay entire compensation of Rs.1,61,930/- (Rupees One Lakh Sixty One Thousand Nine Hundred and Thirty Only) together with interest at the rate of 12% from the date of accident till the date of deposit to the credit of W.C.No.127 of 2005 on the file of the Deputy Commissioner of Labour, Madurai,



within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the same after following due process of law.

7. Accordingly, the Civil Miscellaneous Appeal is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Deputy Commissioner of Labour, Madurai.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-38644[F] dated 14/12/2021)

CMA (MD) No.1352 of 2011
14.12.2021

RD(20.01.2022) 3P 3C