



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 16.08.2021**

**Delivered on : 26.11.2021**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE R.THARANI**

**C.M.A(MD) No.1259 of 2013**

**and**

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

WEB COPY

Royal Sundaram Alliance Insurance

Company Ltd.,

No.6, Surronto Building,

LB Bridge Road, Adyar,

Chennai.

... Appellant / 2<sup>nd</sup> Respondent

Vs.

1.Sengamalam

... 1<sup>st</sup> Respondent/Petitioner

2.Ganesan

... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the award dated 28.11.2012 made in W.C.No.261 of 2010, 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 28.11.2012, made in W.C.No.261 of 2010, 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.261 of 2010.

3.Brief substance of the petition in W.C.No.261 of 2010, is as follows:-

The petitioner was working as a load man in a vehicle that belonged to the first respondent bearing Registration No.TN-52-A-1959. On 26.07.2010, when the petitioner was unloading Marble stones for construction work, the driver of the Vehicle suddenly moved the vehicle and the Marble stones fell on the petitioner and he sustained injuries. He took treatment in Musiri Government Hospital, then, he took treatment in Trichy Geethanjali Hospital. The petitioner claimed a sum of Rs.4,00,000/- as compensation.

<https://hcservices.courts.gov.in/hcservices/> 4.Brief substance of the counter filed by the first respondent



in W.C.No.261 of 2010, is as follows:-

The petitioner did not sustain injury during the course of employment. There is no relationship of employer and employee between the petitioner and the first respondent. The petition to be dismissed.

5.Brief substance of the counter filed by the second respondent in W.C.No.261 of 2010, is as follows:-

The date of accident, mode of accident, place of accident are all denied. The disability is denied. The accident was not during the course of employment. The age, income and profession of the petitioner are all denied. It was the petitioner, who invited the accident.

6.On the side of the petitioner, two witnesses were examined and eight documents were marked. On the side of the respondent, two witnesses were examined and no document was marked.

7.After considering both sides, the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy, awarded a compensation of Rs.3,15,972/-. Against that award, the present Appeal is filed by the appellant.

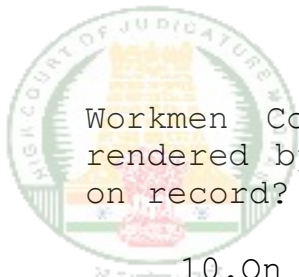
8.On the side of the appellant, it is stated that the injured claimant was not employed by the first respondent herein. There was no employer and employee relationship between the injured and the first respondent. The accident did not take place during the course of employment. There cannot be any automatic liability for the Insurance Company under the Workman Compensation Act unless and until it is established by the claimant that he was employed by the employer and the accident took place during the course of employment.

9.The learned counsel for the appellant has raised the following questions of law:

(i)Whether the learned Commissioner for Workmen Compensation committed an error by allowing the application under the Workmen Compensation Act even without proving the relationship of employer - employee between the owner of the vehicle and the injured claimant?

(ii)Whether the learned Commissioner of Workmen Compensation is competent to allow a claim application under the Workmen Compensation Act even when there is no proof of employer - employee relationship between the owner of the vehicle and the injured claimant and when there is no proof that the accident in question took place in the course of or arising out of the alleged employment?

(iii)Whether the findings of the learned Commissioner for



Workmen Compensation be sustained for the reason that they are rendered by perverse application of material and evidence available on record?

10. On the side of the appellant, it is stated that in the absence of proof of employer - employee relationship, the claim under the Workmen Compensation Act is not maintainable. There was no proof that the victim of the accident was a load man and that more than seven persons travelled in the vehicle. The owner of the vehicle entered appearance and filed the counter and gave a statement that the claimant was not under his employment. Unless there was a relationship of Master and Servant, the Insurance Company cannot be made liable. When the respondent denied the relationship of employer and employee, it is the duty of the claimant to prove the relationship. No such document was filed on the side of the claimant and there was no oral evidence on that point.

11. 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.

12. It is seen that the owner of the vehicle has denied employer and employee relationship between himself and the injured claimant. It is seen that in the F.I.R, it was stated that the injured was working as a load man at the time of accident. R.W.1 /Vaitheeswaran was examined on the side of the appellant herein. He has deposed that two load men were injured in the accident and he has admitted that premium was paid for six load man. The first respondent in his evidence has deposed that his vehicle was insured and policy covers driver, cleaner and six load men and he has admitted that the driver of the vehicle admitted his guilt before the Court and he paid fine. He has further admitted that narration of accident as mentioned in the F.I.R is correct.

13. P.W.3 has deposed that the claimant was working as a load man and the accident took place during the course of employment. So, from the evidence of P.W.3, and from the evidence of R.W.1 and from Ex.P1/ F.I.R., it is decided that the injured was working as a load man and the accident was during the course of employment. Hence, it is decided that the finding of the Commissioner for Workmen Compensation, is based on the materials and evidence available on records and the finding is not perverse. All the questions raised by the appellant are not questions of law.

14. In view of the same, it is decided that there is nothing sufficient enough to interfere in the orders of the Commissioner of  
<https://hcservices.courts.gov.in/cases/view>



Workmen Compensation (Deputy Commissioner of Labour), Trichy. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

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

2.The Section Officer,  
V.R Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 Copies)

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-36197[F]  
dated 26/11/2021 )

Judgment made in  
C.M.A(MD) No.1259 of 2013  
26.11.2021

SR(CO)

MGJ(07.12.2021) 4P 5C