

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

Date of Reservation	10.03.2021
Date of Judgment	09.06.2021

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.296 of 2013andMP (MD) No.1 of 2013

New India Assurance Company Limited,
through its Divisional Manager,
92, G.N.Shetti Salai,
T.Nagar, Chennai.

: Appellant/2nd Respondent

Vs.

1.S.Abbas : 1st Respondent/Petitioner2.G.Kalyanakumar : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act against the award, dated 30.04.2009 made in WC No.120 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

For Appellant : Mr.I.Robert Chandra Kumar

For 1st Respondent : Mr.S.Vidya Sagar
(Legal Aid Counsel)For 2nd Respondent : No appearance**JUDGMENT**

Challenge made in this appeal is to the award, dated 30.04.2009 made in WC No.120 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

2.The first respondent/petitioner was working as a conductor under the vehicle TN-63-D-8230 owned by the 2nd respondent herein. It is alleged that on 12.09.2004 at about 11.15 hours, when the claimant was travelling in the vehicle TN-63-D-8230, which was proceeding towards Thirumayam, near Murugandipatti the driver of the vehicle saw his owner and applied sudden brake, due to which he lost his control and allowed the vehicle to capsize. In that accident, the claimant had sustained multiple fracture injuries and he was immediately taken to Government Hospital, Thiruppathur and thereafter he was referred to Rajaji Government Hospital, Madurai, where he took treatment for one month as inpatient and thereafter, he was taking treatment in a private hospital. The injured claimant filed a claim petition in WC No.120 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul, seeking compensation of Rs. 4,00,000/- for the



injuries sustained by her in the accident.

3.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

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4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the vehicle was responsible for the accident and the claimant was working under the employment of the 2nd respondent in the claim petition and awarded compensation of Rs.1,78,099/- Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.It is the main contention of the appellant that the injured failed to prove that he was working as an employee under the owner of the offending vehicle at the time of accident and hence, there is no employer and employee relationship between the owner of the offending vehicle and the injured and hence, their Insurance Company is not liable to pay the compensation and prays for allowing the Civil Miscellaneous Appeal.

7.But on the side of the 1st respondent/claimant, it is argued that at the time of accident, the injured was working as Conductor under the owner of the offending vehicle and when the offending vehicle reached Murugandipatti, the driver of his vehicle applied sudden break and due to it, the vehicle was capsized and due to it, he sustained injuries and the accident occurred in the course of and out of the employment and at the time of accident, the offending vehicle was insured with the appellant Insurance Company and hence, the Insurance Company is liable to pay the compensation to the claimant.

8.The injured claimant has stated in his petition and evidence that at the time of accident, he travelled as conductor in the offending vehicle. The competent person to deny the said fact is the owner of the offending vehicle. But the owner of the offending vehicle did not appear before the tribunal and denied that the injured was not working as conductor at the time of accident. In this case, in respect of the accident, the owner of the vehicle gave Ex.P1 complaint. On perusal of Ex.P1, it is stated that at the time of accident, the injured travelling in his vehicle. But the owner of the vehicle has not stated that at the time of accident, the injured travelled as an unauthorized passenger. The Doctor, who determined the disability of the injured stated in his disability certificate that the injured is a cleaner, load man. On perusal of Ex.P1 and the claim petition, it reveals that at the time of accident, the injured was travelling in the offending vehicle as an employee of the owner of the offending vehicle.



9. Further, the learned counsel appearing for the appellant/2nd respondent argued that the owner of the offending vehicle permitted more than two persons to travel in the offending vehicle and hence, it amounts to violation of policy condition and hence, the appellant Insurance Company is not liable to pay the compensation to the claimants.

10. In this case, the official of the Insurance Company was examined as RW1. RW1 during his evidence stated that at the time of accident, there was policy coverage for two persons including driver. The owner permitted more than two persons to travel and hence, it amount to violation of policy condition and hence, their Insurance Company is not liable to pay the compensation. But RW1 during his cross examination stated as follows:-

"எ.ம.சா.ஆ.1 பாலிசியில் டபிள்யூ.சி 2 நபர்கள் என்றால் சரி. ஆர்.சி.யின்படி 2 பேர் செல்லலாம் என்றால் சரி" எனவும். மறுகுறுக்குவிசாரணையில்... ஒரு காயம் பட்ட நபருக்கு மட்டும் வழக்கு தாக்கல் செய்யப்பட்டுள்ளது என்றாலும் வேறு நீதிமன்றத்தில் வேறு எந்த நபர்களுக்கும் மனு தாக்கல் செய்யப்படவில்லை என்றாலும் சரி.. எனவும் தெரிவித்துள்ளார்."

11. In this case, the injured alone filed the claim petition. Further, it reveals from the the insurance policy, the insurance coverage is for two persons including the driver. Hence, it is held that there was insurance coverage for the injured at the time of accident. Hence, it is held that the Insurance Company is liable to pay the compensation. Considering the above aspects, the tribunal has rightly given a findings, which requires no interference by this court. The award of the learned Deputy Commission of Labour is based on evidence and there is no substantial question of law arises for consideration by this court.

12. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar(CS)

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

<https://hcservicescourtmadras.gov.in/>
The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Dindigul.



2.The Record Keeper, (2c)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-19182[F] dated
11/06/2021)

C.M.A (MD) No.296 of 2013
09.06.2021

KB (24.06.2021) 4P 5C