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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.08.2021

Delivered On : 16.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No.383 of 2013

and

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

Branch Manager,
National Insurance Co. Ltd.,
2nd Floor, Balaji Towers,
11, Radhakrishnan Road,
Salem.

..Appellant/Respondent No.2

Vs.

1.Jalal
2.Kumar

... Respondent No.1/Petitioner
... Respondent No.2/Respondent No.1

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the judgment and decree passed in W.C.No.415 of 2006 dated 26.09.2008, 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 has been filed against the award passed in W.C.No.415 of 2006 dated 26.09.2008, 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 claim petition. The appellant herein has filed a claim petition in W.C.No.415 of 2006, claiming a compensation of Rs.3,00,000/- (Rupees Three Lakhs only). The Tribunal has awarded a sum of Rs.1,50,131.52/- (Rupees One Lakh Fifty Thousand One Hundred Thirty One and Fifty Two Paise only) as compensation. Against which, the appellant has preferred this appeal.



3.A brief substance of the claim petition in W.C.No.415 of 2006 is as follows:

The claimant was working as a driver in the lorry bearing registration No.TN-25-9396 that belong to the first respondent. On 04.10.2006, when the claimant was driving the lorry along the Aranthangi to Pudukkottai road, the vehicle dashed against another lorry, which came from the opposite direction and capsized. The claimant sustained fracture on the right leg. He was admitted in the Government hospital, Aranthangi and then he was taken to the Medical College Hospital, Thanjavur. The claimant was aged about 38 years at the time of accident and he was earning Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month as salary and he claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The accident did not take place during the course of employment. No notice under Section 10 of the Act was sent. Hence, the petition is not maintainable. The date of accident, time of accident, place of accident are denied. There is no employer and employee relationship between the claimant and the first respondent. The injuries are simple in nature. The vehicle was not having FC or permit. The driver has no valid driving licence. The claimant has not stated how long he worked under the first respondent. The claim is excessive. At the time of accident, the vehicle was registered in the name of Kumar. But the policy stand in the name of one Paneer Selvan. There was no privity of contract between Kumar and the insurance company. The second respondent is not liable to pay compensation.

5.On the side of the petitioner therein, two witnesses were examined and eight documents were marked. On the side of the respondent therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.1,50,131.52/- (Rupees One Lakh Fifty Thousand one Hundred Thirty One and Fifty Two Paise only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.The points for consideration raised by the appellant is as follows:

"(I)Whether the Commissioner is justified in fastening the liability on the appellant when there is no employer and employee relationship between the claimant and the insured of the appellant ?

(ii)Whether the Commissioner is justified in fixing the loss of earning capacity at 33 % when the doctor had assessed only the disability ?



(iii)Whether the default interest is payable from the date of accident or from the date of award ?"

Issues : -

7.On the side of the appellant, it is stated that the policy stand in the name of one Pannerselvan. But the vehicle was transferred in the name of one Kumar. No liability can be fastened against the appellant. There is no contract of insurance between the appellant and one Kumar, who is the owner of the vehicle on the date of accident. The monthly income fixed by the Labour Commissioner is excessive.

8.On the side of the appellant, it is further stated that there is no contract between the owner of the vehicle and the appellant. The second respondent herein is the owner of the vehicle but the policy stand in the name of one Pannerselvan. There was no employer and employee relationship between Pannerselvan and the claimant. There is no policy in the name of Kumar and hence, the appellant is not liable to pay compensation.

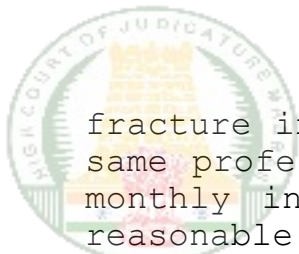
9.It is seen that the vehicle was transferred to the name of the second respondent Kumar on 28.08.2006. The insurance policy continued to be in the name of the erstwhile owner Pannerselvam. The name in the insurance policy was not transferred.

10.At this juncture, this Court would rely upon the Judgment of the Hon'ble Apex Court in the case of **Firdaus v. Oriental Insurance Co. Ltd., and Ors.** reported in **2017 ACJ 2608**, wherein it is stated as follows:

"In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventually, I.e. Whether defendant No.1 was the owner of the vehicle on the date of accident, or defendant No.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd., continues and Workmen compensation Commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High Court to find out as to whether Parvez Khan was an employee of the Defendant No.1 or not, was unnecessary."

11.As per the above judgment of the Hon'ble Apex Court, it is decided that the insurance company is liable to pay the compensation, though the name in the policy was not transferred.

12.The verification of records reveals that the claimant was a lorry driver and his driving licence was marked as Ex.P4. The disability certificate was marked as Ex.P8. The claimant sustained



fracture in the right leg. It is impossible for him to continue the same profession. Fixing disability as 33% is reasonable. Fixing the monthly income as Rs.4,000/- (Rupees Four Thousand only) is also reasonable. The Tribunal has awarded a sum of Rs.1,50,131.52/- (Rupees One Lakh Fifty Thousand one Hundred Thirty One and Fifty Two Paise only) as compensation and the same is rounded off to Rs.1,50,135/- (Rupees One Lakh Fifty Thousand One Hundred and Thirty Five only).

13.In fact there is no substantial question of law raised by the appellant. There is nothing sufficient enough to interfere in the order passed in in W.C.No.415 of 2006 dated 26.09.2008, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

14.In the result, this Civil Miscellenaous Appeal is dismissed. The first respondent is entitled to a sum of Rs.1,50,135/- (Rupees One Lakh Fifty Thousand One Hundred and Thirty Five only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15.The appellant is directed to deposit Rs.1,50,135/- (Rupees One Lakh Fifty Thousand One Hundred and Thirty Five only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

2.Mr.Jalal,
S/o.Abdul Wahab,
No.52/2,2nd Street, Gandhi Nagar,
Lakshminarayananpuram,
Aranthangi Post,
Pudukkottai. (Claimant)

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

C.M.A. (MD) No.383 of 2013

16.08.2021

es (CO)
TR(06.09.2021) 5P 5C