



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	12.03.2021
Date of Judgment	14.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.473 of 2013

The Divisional Manager,
National Insurance Company Limited,
Tallakulam Branch,
Madurai-625 002.

: Appellant/2nd Respondent

Vs.

1.R.Pitchai
2.A.Ibrahimsa

: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 30 of Workmen Compensation Act against the award, dated 04.08.2011 made in WC No.237 of 2006 on the file of the commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.N.Murugesan
For 1st Respondent : Mr.M.Senthilkumar
For 2nd Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award, dated 04.08.2011 made in WC No.237 of 2006 on the file of the Workmen Compensation (Deputy Commissioner of Labour), Madurai.

2.It is revealed from the records that the 1st respondent/applicant is working as a Driver under the 2nd respondent herein in the auto rickshaw TN-58-C-1154 and he was earning Rs.5,000/- per month. On 23.08.2003 at about 6.00 am, when the 1st respondent herein drove the auto rickshaw TN-58-C-1154 on Madurai-Theni Road, near Achampattu, the mini Lorry TN-58-F-4414 came in a rash and negligent manner and dashed against the front side of the auto rickshaw. In the accident, the 1st respondent herein sustained multiple grievous injuries all over the body and immediately, he was taken to Government Rajaji Hospital, Madurai and then, he was taking treatment at Vijaya Hospital, Modakkusalai, Madurai, as inpatient. The 1st respondent herein filed a claim petition seeking compensation of Rs.5,00,000/- alleging that he sustained injuries in the course of employment working under the 2nd respondent herein.



3.The 1st respondent/applicant has stated that the deceased was 36 years at the time of accident and he was working as a Driver under the 2nd respondent herein, thereby he was getting Rs.5,000/- per month. It is alleged that the applicant sustained injuries only during the course of employment under the 2nd respondent herein.

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4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the Workmen Compensation tribunal, on the side of the claimants, 2 witnesses were examined and marked 9 documents. On the side of the appellant Insurance Company, no witness was examined and no document was filed.

6.The learned Workmen Compensation Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the 1st respondent/applicant sustained injuries during the course of his employment and awarded compensation of Rs.1,37,863/- and directed the appellant Insurance Company to pay the compensation amount to the 1st respondent/applicant. Aggrieved over the same, the appellant Insurance Company is before this court.

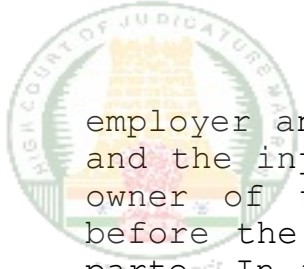
7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.The main contention of the appellant Insurance Company is that the injured was not working under the 2nd respondent herein and there was no employer and employee relationship between the 2nd respondent and the 1st respondent herein and hence, their Insurance Company is not liable to pay the compensation to the insurer and prays that the Civil Miscellaneous Appeal has to be allowed.

9.On the other hand, the learned counsel appearing for the 1st respondent/applicant submitted that at the time of accident, he was working under 2nd respondent as Auto Driver and hence, there was employer and employee relationship between the 2nd respondent and the 1st respondent herein and only due to the rash and negligent driver of the offending vehicle, the accident has occurred and hence, the Insurance Company is liable to pay the compensation.

10.In this case, the 1st respondent/applicant stated that at the time of accident, he was working as Auto Driver under the control of the 2nd respondent herein. On the contrary, the learned counsel appearing for the appellant Insurance Company submitted that at the time of accident, the driver of the alleged auto rickshaw was not working under the 2nd respondent herein and hence, the Insurance Company is not liable to pay the compensation.

11.It is the specific case of the appellant Insurance Company that the 2nd respondent herein is the owner of the alleged auto rickshaw. The competent person to deny the fact that there was no



employer and employee relationship between the owner of the vehicle and the injured, is the owner of the vehicle. But in this case, the owner of the auto-rickshaw was not examined and did not appear before the Workmen Compensation tribunal and hence, he was set ex-parte. In this case, to prove that the 2nd respondent herein is the owner of the auto-rickshaw TN-58-C-1154, the 1st respondent/applicant filed RC book of the auto rickshaw, which stands in the name of the 2nd respondent herein and insured with the appellant Insurance Company.

12. On perusal of Ex.P2 RC book of the auto rickshaw TN-58-C-1154, the owner is A.Ibrahim Sha. But on perusal of Ex.P1 FIR, it was stated therein that in respect of the alleged accident. But during the cross examination of the 1st respondent/applicant, he denied that he was stated in the complaint that he is the owner of the auto rickshaw. To disprove the same, no contra evidence was let in on the side of the appellant Insurance Company stating that the injured is the owner of the above auto. The owner of the vehicle did not appear and contest that the petitioner is the owner of the auto. On perusal of the RC Book and the Insurance Policy, it reveals that at the time of the accident, the A.Ibrahim Sah is the owner of the alleged auto rickshaw.

13. It is admitted fact that when the insured was driving the auto rickshaw, the accident took place. Hence, it is held that the accident took place in the course of out of employment and in the RC book, it is found that there was employer and employee relationship between the owner of the auto rickshaw and the driver of the auto rickshaw namely the 1st respondent herein and out of the employment and during the course of employment, the accident took place, hence, the Insurance Company is liable to pay the compensation to the claimant. This court see no reason to interfere with the findings of the Commissioner of Workmen Compensation, Madurai. The award of the learned Commissioner of Workmen Compensation, Madurai, is based on evidence and there is no substantial question of law arises for consideration by this court.

14. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

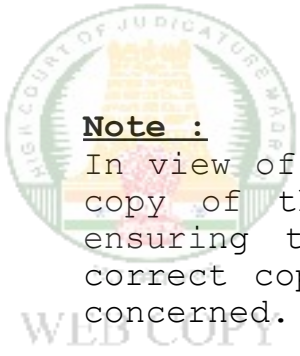
Sd/-

Assistant Registrar (CSIII)

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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,

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

Copy to

The Record Keeper, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-19294[F] dated 15/06/2021)

CMA (MD) No.473 of 2013
14.06.2021

DKS (CO)
KB (08.07.2021) 4P 5C