



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.04.2021

Delivered On : 10.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.646 of 2013

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The Branch Manager,
United India Insurance Co., Ltd.,
7A, West Veli Street, II Floor,
Madurai.

..Appellant/2nd Respondent

Vs.

1.Ramarajan

..1st Respondent/Petitioner

2.P.R.Ganesan

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of The Workmen's Compensation Act, 1923, to set aside the order passed in W.C.No.7 of 2010 dated 25.01.2012 on the file of the Workmen Compensation Commissioner of Labour, Tiruchirappalli.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.S.Deenadhayan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed in W.C.No.7 of 2010 dated 25.01.2012 on the file of the Workmen Compensation Commissioner of Labour, Tiruchirappalli.

2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.7 of 2010 claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation. The Tribunal has awarded a sum of Rs.2,03,112/- (Rupees Two Lakhs Three Thousand and One Hundred and Twelve only) as compensation. Against which, the appellant/insurance company has filed the present appeal.

3.A brief substance of the claim petition in W.C.No.7 of 2010 is as follows:

The claimant was working as a driver engaged by the first respondent. On 16.10.2009, at about 08.00 p.m., when the claimant was driving the vehicle bearing Registration No.TN-63-F-1527 along the Madurai-Pudukottai road near Gundaru Bridge, a bus that came from the opposite direction dashed against the car and the claimant sustained injuries. He was admitted in Tanjore medical college hospital. At the time of accident, he was aged about 20 years and he was earning Rs.4,000/- (Rupees Four Thousand only) per month. The



claimant claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

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

WEB COPY The vehicle was insured with the second respondent. The mode of accident is denied. The second respondent alone is liable to pay compensation.

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

The mode of accident, date of accident, servant master relationship between the first respondent and second respondent are denied. The insurance is in the name of one Dharmalingam. Though the first respondent purchased the vehicle on 16.07.2009, he has not changed the policy in his name. The claimant was not having badge. The vehicle was not having permit or R.C. The first respondent had denied the relationship of employer and employee and prayed the petition to be dismissed.

6.After hearing both sides, the Assistant Commissioner of Labour has passed an award of Rs.2,03,112/- (Rupees Two Lakhs Three Thousand and One Hundred and Twelve only). Against the same, the appellant has preferred this appeal.

7.On the side of the appellant, it is stated that the first respondent has not transferred the policy in his name and there is automatic transfer of policy under Motor Vehicles Act and that the insurance company may be liable to indemnify the new owner of the vehicle. But under Workmen's Compensation Act, the insurance should be in the name of employer and there is no automatic transfer of policy. There was breach of policy condition. The first respondent herein was not having badge. The award is exorbitant.

8.On the side of the appellant, it is stated that there was no employer and employee relationship between the parties. The claimant was not the employee of the second respondent herein. The claimant is actually the son of the second respondent herein and that he is not a worker under his father. When there was no master and servant relationship between the parties, the insurance company is not liable to pay compensation under the Workmen's Compensation Act.

9.In support of this averments, a judgment passed by the Hon'ble Supreme Court in the case of **Gottumukkala Appala Narasimha Raju v. National Insurance Co. Ltd. And another**, reported in **2007 ACJ 1025**, wherein it is stated as follows:-

"Neither any documentary proof to establish



contract of employment was produced nor any independent witness was examined - if they are living separately in view of certain disputes, the question of husband being a workman under wife appears to be far-fetched - story has been concocted for purpose of claim."

10. On the side of the appellant, it is stated that the claimant is the son of the second respondent herein and that there was no employer and employee relationship. In support of his contention, another judgment of this Court in the case of **P.Antharavelu v. A.Singaravelu and another** reported in **2019 (1) TNMAC 92**, wherein it is stated as follows:-

"Injured/claimant allegedly employed under R1, his son, as a driver of vehicle owned by him - Workmen's compensation Commissioner holding that claimant being father and owner of vehicle being son, there is no employer-employee relationship - Therefore, claimant not entitled to claim compensation - if, proper - no evidence that claimant was driving vehicle owned by his son - no evidence that claimant/father was being paid a definite sum for his employment - no proof that injuries sustained in accident - apart from ration card showing both son and father living separately, no other document produced to prove relationship as one of Workmen and Employer - finding of Workmen's compensation Commissioner required no interference."

11. On the side of the appellant, it is stated that it is the duty of the claimant to prove that he happened to be employee of his father at the relevant time of the accident. In support of his contention, a judgment passed by this Court in the case of **Sivamurugan v. Sivanu and others**, in **C.M.A. (MD)No.1034 of 2007** is cited.

12. The learned counsel for the appellant would rely upon another judgment passed by this Court in the case of **United India Insurance v. Saraswathi** in **C.M.A. (MD)No.1651 of 2017**, wherein it is stated as follows:-

"13. In the present case, though the owner of the vehicle admittedly is the wife of the deceased and the deceased was aged about 62 years and the claimants who are all the legal heirs of the deceased, could not able to produce any document establishing the employee employer relationship. There is no reason whatsoever to grant award in **C.M.A.No.1651 of 2017** and **C.M.P.No.8760 of 2017** favour of the claimants. Beyond this point, the first



respondent/first claimant is the married daughter of the deceased and the fifth respondent wife and the other three claimants, the respondents 2 to 4 are the major sons of the deceased as well as the fifth respondent."

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13.On the side of the respondents, it is stated that the relationship of father and son is not a bar for employing the son by the father.

14.The claimant relied upon the judgment of High Court of Karnataka in the case of **United India Insurance Co. Ltd., v. Yallappa Bhimappa Alagudi and another** reported in **AC 2006 (3) 907**, wherein it is stated as follows:

"The contention that the petitioner is the son of the insurer is not a ground to infer that there cannot be a relationship of master and servant. It is not uncommon that the family members are employed in the course of business. The fact that the family members are not regularly employed and that no wages are paid is not valid reasons to defeat the case of relationship of master and servant. The concept of relationship of master and servant should not be understood in its literal sense, any body doing gratuitously for the owner is deemed to be as authorized agent and the concept of master and servant relationship gets invoked."

15.The claimant relied upon the judgment of High Court of Andhra Pradesh in the case of **United India Insurance Co. Ltd., v. N.Bujji and another** reported in **2011 (3) LLN 89**, wherein it is stated as follows:

"There was no prohibition in workmen compensation Act to effect that father should not employ his son under him. On this point alone, claim of widow was justified."

16.On the basis of the latest judgment of the Hon'ble Apex Court, it is decided that there was employer and employee relationship between the claimant and the second respondent.

17.On the side of the appellant, it is stated that there was no badge endorsement in the driving licence of the claimant and that the appellant is not liable to pay compensation.

18.At this juncture, this Court would rely upon the Judgment of the Hon'ble Apex Court in the case of **Mukund Devagan v. Oriental Insurance Co. Ltd.**, reported in **2017 SCC 735**, wherein it is stated as follows:



"In a major boost to the public mobility sector in India the ministry of road transport and highway issued an advisory to all the licensing authorities, to exempt drivers of the following categories from obtaining an endorsement to drive these vehicles, irrespective of the fact that these vehicles may be used for commercial purposes.

- 1.Light motor vehicles (goods/passenger)
- 2.Motor cycles with gear
- 3.Motor cycles without gear
- 4.E-rickshaws/e-carts

This means that commercial transport license would no longer be required for driving the listed categories of vehicles."

19.Since the vehicle involved in the accident is a car, it is decided that non availability of the badge endorsement is immaterial to decide the issue.

20.On the side of the appellant, it is stated that the policy holder was one Dharmalingam. Though the first respondent purchased the vehicle, he failed to transfer the policy in his name. In a case under the M.V. Act, the policy goes along with the vehicle. Though the policy is not in the name of subsequent owner, the claimant can claim compensation under the M.V. Act. This case was filed under the Workmen's Compensation Act and that there is no automatic validity of the policy passed over to the subsequent purchaser.

21.On the side of the first respondent, it is stated that the first respondent has intimated the purchase to the insurance company on 16.07.2009 and subsequently, on 16.10.2009 a reminder was sent and that there was no reply from the insurance company. But no document was marked on the side of the first respondent.

22.It is seen that the policy was not officially transferred in the name of the first respondent herein. 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

<https://hcservices.ecourts.gov.in/hcservices/desktopdefault.aspx?id=1> whether Parvez Khan was an employee of the



Defendant No.1 or not, was unnecessary."

23.As per the decision of the Apex Court, it is decided that the Insurance company is liable to indemnify the subsequent owner of the vehicle.

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24.For the above reasons, the question of law raised by the appellant is not sustainable. There is nothing sufficient enough to interfere in the order passed in in W.C.No.7 of 2010 dated 25.01.2012 on the file of the Workmen Compensation Commissioner of Labour, Tiruchirappalli. This Civil Miscellaneous Appeal is dismissed.

25.In the above circumstances, the claimant is entitled to a sum of Rs.2,03,112/- (Rupees Two Lakhs Three Thousand One Hundred and Twelve only) as compensation with interest at the rate of 12% from the 30th date of the award till the date of realization.

26.The appellant is directed to deposit Rs.2,03,112/- (Rupees Two Lakhs Three Thousand One Hundred and Twelve only) as compensation with interest at the rate of 12% from the 30th date of the award till the date of realization and 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 (CS-I)

// 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 Workmen compensation,
The Commissioner of Labour, Tiruchirappalli.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-25936[F] dated
11/08/2021)

C.M.A. (MD) No.646 of 2013
10.08.2021

MA (CO)
KB(24.08.2021) 7P 5C