



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.09.2021

Delivered on: 24.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

WEB COPY

C.M.A(MD) No.689 of 2013

and

M.P.(MD)No.2 of 2013

National Insurance Company Ltd.,
Branch Office, 63, Rasi Plaza,
West Pradhatshanam Road,
Karur - 693 002.

... Appellant / 2nd Respondent

Vs.

1.K.Saravanan
2.S.Boopathi

... 1st Respondent / Applicant
... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Employees Compensation Act, against the order, dated 30.03.2012, made in W.C.No.44 of 2009, on the file of the Commissioner for Workmen Compensation - Commissioner of Labour, Dindigul.

For Appellant : Mr.Murugesan

For Respondents: No appearance

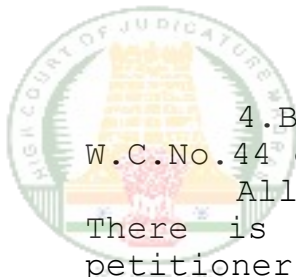
JUDGMENT

This Civil Miscellaneous Appeal is filed against the dated 30.03.2012, made in W.C.No.44 of 2009, on the file of the Commissioner for Workmen Compensation - Commissioner of Labour, Dindigul.

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.

3.Brief substance of the petition in W.C.No.44 of 2009 is as follows:-

The petitioner was working as a driver in the lorry bearing Registration No.KA-01-C-3006 that belonged to the first respondent, he was earning a sum of Rs.6,000/- as monthly salary and Rs.75/- as daily batta. The petitioner was aged about 28 years at the time of accident. On 16.07.2008, the petitioner was working as a driver in the lorry, when the petitioner was removing the Tarpalin on the load of ash, he fell down and sustained injuries. He took First Aid in Sri Sakthi Vinayagam Hospital, Kujiliamparai and took treatment as inpatient for 20 days. The petitioner claimed a sum of Rs.5,00,000/- as compensation.



4. Brief substance of the counter filed by the respondents in W.C.No.44 of 2009 is as follows:-

All the allegations set out in the petition are all denied. There is no relationship of employer and employee between the petitioner and the first respondent. The petitioner did not work as a driver in the lorry that belonged to the first respondent. The manner of accident, nature of injuries, period of treatment and medical expenses are all denied. Policy copy was not submitted by the first respondent. Whether the lorry was permitted to enter the premises was not mentioned. Disability, manner of treatment and medical expenses are to be proved.

5. On the side of the petitioner, two witnesses were examined and twelve documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. The Commissioner of Labour, Dindigul, after considering both sides, awarded a sum of Rs.1,62,655/- as compensation. Against the same, the second respondent / appellant has preferred this Appeal.

7. On the side of the appellant, it is stated that the learned Commissioner erred in relying upon Ex.P2/ complaint given by one Subramani, who is the brother-in-law of the claimant. There was no proof in respect of the nature of the accident and manner of accident. There was no proof regarding the employment of the claimant working as a driver under the first respondent. The Complainant was not examined. The alleged co-driver/Murugesan was not examined. The burden of proof is on the claimant. The policy was in the name of one Periyasamy and not in the name of the first respondent and prayed the second respondent / appellant herein to be exonerated.

8. The appellant has raised the following questions in the appeal:-

a) Whether the award is liable to be set aside on account of the ground that the same cannot be maintained under law or on facts under Section 3 of the W.C.Act?

b) Whether the relationship of the employer and employee would exist between the Applicant and the owner of the vehicle?

c) Whether the learned Commissioner is justified in awarding the compensation as against the Company since there is no relationship of employer and employee in existence?

d) Whether the award of the learned Commissioner is legally and factually sustainable?

9. On the side of the appellant, it is stated that the relationship of employer and employee was not proved by the claimant and that whether the appellant was working as a driver under the first respondent was not proved. Neither the co-driver/Murugesan nor the driver/complainant in the F.I.R. were examined to prove the same. The



first respondent was not examined, to disprove the relationship of master and servant.

10.The 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.

11.The first respondent remained exparte before the Labour Commissioner. The claimant claimed himself as the driver engaged by the first respondent. No rebuttal evidence was produced on the side of the respondents. No witness was examined and no document was marked on the side of the respondents. Hence, it is decided that the claimant was working as a driver under the first respondent and that the appellant has failed to prove that Section 3 of the Workmen Compensation Act was not applicable to the present case. All the questions raised by the appellant are not questions of law, they are only questions of facts.

12.In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Commissioner of Labour. Hence, the order, dated 30.03.2012, made in W.C.No.44 of 2009, on the file of the Commissioner for Workmen Compensation - Commissioner of Labour, Dindigul, is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner for Workmen Compensation -
Commissioner of Labour, Dindigul.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-30291[F] dated 27/09/2021)

C.M.A(MD).No.689 of 2013
24.09.2021

PKP/01.10.2021/3P/5C