



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.08.2021

Delivered on : .17.09.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.897 of 2013

WEB COPY

Branch Manager,
National Insurance Company Ltd.,
63, Rasi Plaza, Pradhachanam Road,
Karur. ... Appellant / 2nd Respondent

Vs.

1.P.Sundarraaj ... 1st Respondent / Petitioner
2.P.L.Arunachalam ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, against the award, dated 24.04.2006 received by the appellant counsel, on 02.05.2006 and made in W.C.No.202 of 2004 on the file of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Dindigul and praying to set aside the same.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 24.04.2006, made in W.C.No.202 of 2004 on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Dindigul.

2.The appellant herein is the second respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent in the claim petition.

3.Brief substance of the petition, in W.C.No.202 of 2004 is as follows:

The petitioner worked as a load man in the vehicle bearing Registration No.TN-47-A-6996, that belonged to the first respondent. On 20.06.2004, at about 2.15 p.m., when the petitioner and others travelled in the vehicle as load men with vegetable sacks, the driver of the vehicle drove the vehicle in a rash and negligent manner, dashed against a tree and the vehicle capsized. The petitioner sustained injuries and he took treatment in C.F. Hospital, Ottanchatram as inpatient from 20.06.2004 till 28.06.2004, then he took treatment as out patient. The petitioner claimed a sum of Rs.5,00,000/- as compensation.



4.Before the Deputy Commissioner of Labour, Dindigul, the first respondent was set as exparte.

5.Brief substance of the counter of the second respondent, in W.C.No.202 of 2004, is as follows:

The petitioner has to prove that he worked as a load man at the time of accident. The age and income are to be proved. No notice was sent under Section 10 of the Workmen Compensation Act. The nature of the injury, particulars of treatment and the expenses are to be proved. In the F.I.R, it is stated that the petitioner worked as a load man under one Iyalaraja. The second respondent has no connection with Ilayaraj. There was no relationship of employer and employee between the petitioner and the first respondent. 13 persons travelled in the vehicle at the time of accident. The first respondent violated the policy conditions and the second respondent is not liable to pay compensation. The petitioner was an unauthorized passenger in a goods carrier and there was no policy coverage and prayed the petition to be dismissed.

6.On the side of the petitioner, two witnesses were examined and six documents were marked. On the side of the second respondent, one witness was examined and two documents were marked.

7.After considering both sides, the Deputy Commissioner of Labour, Dindigul, awarded a sum of Rs.1,16,962/- as compensation. Against the same, the appellant approached this Court by way of this Appeal.

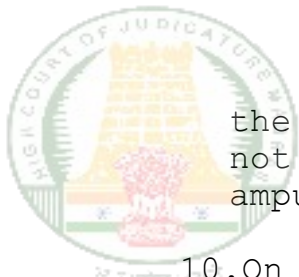
8.On the side of the appellant, it is stated that the Commissioner failed to note that as per the evidence of R.W.1 and Ex.R1, there is no coverage for driver and cleaner and that there is no coverage for load man. As per Ex.R2/ charge sheet, the driver of the Van was charge sheeted for carrying more than permitted persons in the Van and there is violation of policy conditions. The Commissioner ought to have given the right of recovery from the insured. As per the evidence of P.W.2/ Doctor, the petitioner has sustained injury only on his lower jaw, which will not in any way affect the earning capacity of the petitioner. The Commissioner is wrong in fixing the loss of earning capacity at 25%. The award is excessive.

9.The learned counsel for the appellant has raised the following questions:

"1.Whether the insurer can be made liable to indemnify the insured when there is no coverage under the policy?

2.Whether the insurer can be made liable to indemnify the insured when there is a violation of terms of the policy by the insured?

<https://hcservices.ecourts.gov.in/hcservices/> 3.Whether the Commissioner is justified in fixing



the loss of earning power at 25% when the claimant did not sustain any schedule injury and there is no amputation or loss of earning power?"

10.On the side of the appellant, it is stated that only in cases under the Motor Vehicles Act, for third party claim, there was no need to transfer the policy and the policy is deemed to be transferred and run with the vehicle. In cases under the Workmen Compensation Act, the relationship of master and servant has to be proved. In the F.I.R., it is stated that Ilayaraja was the employer of the petitioner, but, in the claim petition, it was stated that one Arunachalam was the employer of the petitioner. Registration Certificate is not in the name of Ilayaraja. Seating capacity of the vehicle is only for two persons, but, five women and a driver travelled in the vehicle. There is violation of policy conditions. Option is given to the claimant to choose the Forum. Under the Workmen Compensation Act, negligence need not be proved. Till the year 2012, monthly income was fixed only at Rs.3,000/- per month and the award is excessive.

11.The first respondent remained exparte and he has not come forward to state that the petitioner is not his employee. The appellant herein failed to examine the driver of the first respondent's vehicle.

12.Ex.P4/ Insurance Policy reveals that the Policy was in the name of the first respondent and the name of the driver is Ilayaraja. Complaint was given by a third person and the statement in the complaint cannot be taken as an evidence against the claimant. It is seen that the appellant has raised three questions under the caption "substantial questions of law." A perusal of all the three questions reveals that there is no substantial question of law raised by the appellant.

13.In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Dindigul. This Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Workmen Compensation Commissioner
and Deputy Commissioner of Labour,
Dindigul.

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-29513[F] dated
17/09/2021)

C.M.A(MD) No.897 of 2013
17.09.2021

MGJ(27.09.2021) 4P 5C