



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.07.2021

Delivered On : 05.08.2021

CORAM

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

C.M.A.(MD)No.959 of 2013

and

C.M.P.(MD)No.6165 of 2017

The Divisional Manager,  
M/s.Iffco Tokio General Insurance  
Company Ltd.,  
10-B, T.B.Road,  
Mahaboobpalayam, Madurai.

..Appellant/Respondent-2

Vs.

1.C.Rajamani  
2.V.Pandirajan

..1<sup>st</sup> Respondent/Petitioner  
..2<sup>nd</sup> Respondent/Respondent-1

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, to set aside the judgment and decree passed in W.C.No.231 of 2006 dated 31.01.2013, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

|                                |                           |
|--------------------------------|---------------------------|
| For Appellant                  | : Mr.S.Srinivasa Raghavan |
| For 1 <sup>st</sup> Respondent | : Mr.A.Theether           |
| For 2 <sup>nd</sup> Respondent | : Exparte                 |

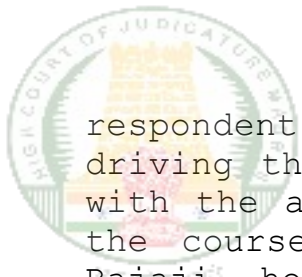
#### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award passed in W.C.No.231 of 2006 dated 31.01.2013, on the file of the Commissioner of Workmen Compensation (Deputy 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 claim petition. The appellant herein has filed a claim petition in W.C.No.231 of 2006, claiming compensation of Rs.6,00,000/- (Rupees Six Lakhs only). The Tribunal has awarded a sum of Rs.1,44,699/- (Rupees One Lakh Forty Four Thousand Six Hundred and Ninety Nine only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in W.C.No.231 of 2006 is as follows:

The claimant was working as a loadman in the vehicle  
<https://hservices.mca.gov.in/hservices/> Registration No.TN-27-B-5869 that belong to the first



respondent. On 30.03.2006, at about one hour, the claimant was driving the van that belongs to the first respondent and he meet with the accident and sustained injuries. The accident was during the course of employment. The claimant was admitted in Madurai Rajaji hospital and he took treatment as 'inpatient' from 13.06.2006 till 26.06.2006 and then he took treatment as 'out patient'. The left hand little finger of the claimant was cut off. The claimant was not able to lift even a light weight object. He could not continue the work of loadman. The claimant claimed a sum of Rs.6,00,000/- as compensation.

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

The claimant could not get compensation under the Workmen Compensation Act. The age, income, profession, mode of accident and the relationship of master and servant are to be proved by the claimant. There was a delay in filing the FIR. There is no connection between the accident and the vehicle. The first respondent and the claimant have colluded and fraudulently mentioned that the van was involved in the accident. In FIR, it is stated that the claimant was working under a person by name Siddhaandi. There is no connection between Siddhaandi and the case. There is no relationship of master and servant between the first respondent and claimant. The first respondent driver is not having a valid driving licence. There is no necessity for the second respondent to pay any compensation.

5. On the side of the petitioner therein, three witnesses were examined and five documents were marked. One Court document was marked. On the side of the respondent therein, two witnesses were examined and two documents were marked. After trial, the Tribunal has awarded a sum of Rs.1,44,699/- (Rupees One Lakh Forty Four Thousand Six Hundred and Ninety Nine only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6. The points for consideration is as follows:

*"(I) Whether the learned Commissioner for Workmen Compensation is justified in mulcting the liability on the insured company when the claimant happened to be an unauthorized passenger in the goods carrier ?*

*(ii) Whether the learned Commissioner for Workmen Compensation is competent to invoke the defence of the insurer under Section 149 of the Motor Vehicle Act in a proceeding under the Workmen Compensation Act ?"*

7. On the side of the appellant, it is stated that there was



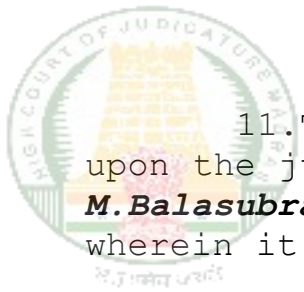
no employer and employee relationship between the injured claimant and the owner of the vehicle. The alleged date of accident is 30.03.2006 but the accident was reported before the Police only on 27.04.2006. The insured vehicle was not involved in any accident. An ordinary incident was converted into an accident. In the FIR, it was stated that the claimant worked under Siddhaandi, which reveals that the claimant was not working under the first respondent. The injured was never engaged as loadman under the first respondent. The injured travelled in the vehicle only as a grievous passenger not as a loadman. The driver of the insured vehicle was not holding a valid driving licence. The injured travelled in the insured vehicle went to attend a cultural event in a temple festival. The burden is on the claimant to prove the case and prayed the award to be set aside.

8.On the side of the appellant, it is further stated that the claimant is only an unauthorized passenger, who travelled in a goods carrier. He is not an employee of the first respondent. On transfer of ownership of the vehicle, the insurance policy under M.V.Act automatically stands transferred to the new owner but under the W.C. Act, the name of the new owner of the vehicle has to be found place in the policy, as the matter to be decided in W.C. Act is the relationship of master and servant. When there is no master and servant relationship between the registered owner of the vehicle and the claimant, the insurance company is not liable to pay compensation.

9.On the side of the first respondent, it is stated that the accident took place during the course of employment. The evidence of co-worker by name Raja, proved that the claimant is an employee. The question of employer and employee relationship was already discussed by the trial Court. The relationship of master and servant is purely a question of fact and the same cannot be questioned by way of appeal.

10.The learned counsel for the first respondent would rely upon the judgment of this Court in the case of **Divisional Manager v. K.Mayandi and others** reported in **2013 (1) TNMAC 191**, wherein it is stated as follows:

*" Issue regarding existence of relationship of employer and employee-may be purely a question of fact or question of law or mixed question of law and fact, depending upon definitions under statute and depending upon context of relationship between employer and employee -issue in instant case is a mixed question of law and fact-contention as to maintainability of appeal, therefore held not acceptable."*



11.The learned counsel for the first respondent would rely upon the judgment of this Court in the case of **D.Shanmuga Anand v. M.Balasubramanian and others** reported in **2012 (1) TNMAC 216**, wherein it is stated as follows:

"Merely because a person may be able to perform certain work, it cannot be assumed that driver, who has been disabled to do driving and can do some other work for which he has no competence or experience, is not entitled to claim total disablement under Section 2(1)(1) -in such circumstances loss of earning capacity can be held to be 100 % and not 60% as determined by Workmen's Compensation Commissioner-loss of earning capacity is different from loss of physical capacity."

12.In support of his contention, the judgment passed by this Court in the case of **Madras Dock Labour Board v. K.Geetha and others** reported in **2006 (1) TAC 900** is cited.

Issue No.1:

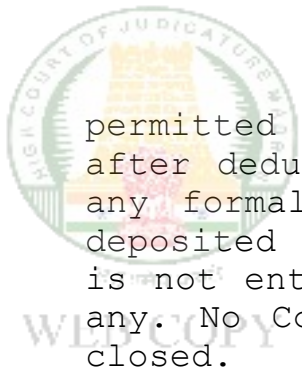
13.Whether the claimant driver is an unauthorized passenger or a loadman is a question of fact. The same was already discussed and decided by the Tribunal. There is no necessity to decide the issue in the appeal.

Issue No.II:

14. the side of the appellant, it is stated that under Section 149 of the M.V. Act, the Labour Court ought to have directed the amount to be paid for the appellant and to permit the appellant to receive the amount from the owner of the vehicle. The present case is filed under the Workmen Compensation Act and not under the M.V. Act and hence, this questions raised by the appellant is not maintainable. There is no other substantial question of law raised by the appellant.

15.In the result, this Civil Miscellenaous Appeal is dismissed. The first respondent is entitled to a sum of Rs.1,44,699/- (Rupees One Lakh Forty Four Thousand Six Hundred and Ninety Nine only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

16.The appellant is directed to deposit Rs.1,44,699/- (Rupees One Lakh Forty Four Thousand Six Hundred and Ninety Nine 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 without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the second respondent. 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),  
Dindigul.

**Copy to**

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate ( SR-25425[F] dated 05/08/2021 )

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate ( SR-25573[F] dated 06/08/2021 )

C.M.A.(MD)No.959 of 2013

**05.08.2021**

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