

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	29.01.2021
Date of Judgment	17.04.2021

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.103 of 2015

and

MP(MD)No.2 of 2015

The Divisional Manager,
M/s.United India Insurance Company Limited,
Divisional Office,
7-A, West Veli Street,
Madurai.

: Appellant/3rd Respondent

Vs.

1.Kumar : 1st Respondent/Petitioner
2.G.Velayuthan : 2nd Respondent/R1
3.The Divisional Manager,
M/s.Tata AIG General Insurance Company Limited,
No.1, Ethiraj Salai,
Egmore, Chennai. : 3rd Respondent/R2

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of Workmen Compensation Act against the award, dated 03.01.2013 (which was signed by the Authority on 04.04.2013) made in W.C No.198 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.J.S.Murali

For 1st Respondent : Mr.A.Theethar

For 2nd Respondent : No appearance

For 3rd Respondent : Mr.S.Srinivasa Raghavan

JUDGMENT

Challenge made in this appeal is to the award, dated 03.01.2013 in W.C No.198 of 2009 by the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.



2.The claimant was working as a load man employed by the 1st respondent in his Tractor TN-63-J-3386 and Trailer TN-63-H-2484. On 17.06.2009 at about 13.00 hours, when the above vehicle was proceeding on Padamathur to Thiruppachethi Main road, near Pacheri Vilakku Road, Pillaiyar Kovil, it met with the accident. In the accident, the claimant sustained injuries and immediately, he was admitted in the Rajaji Government Hospital, Madurai, where he was taking treatment as inpatient between 17.06.2009 and 25.06.2009. The injured claimant filed a claim petition seeking compensation of Rs.5,00,000/- on the ground that the driver of the tractor was responsible for the accident.

3.The claimant has stated that at the time of the accident, his age was 27 and was earning Rs.5,000/- per month. A criminal case in Crime No.148 of 2009 was registered against the driver of the offending vehicle by Thiruppachethi Police, Sivagangai District.

4.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

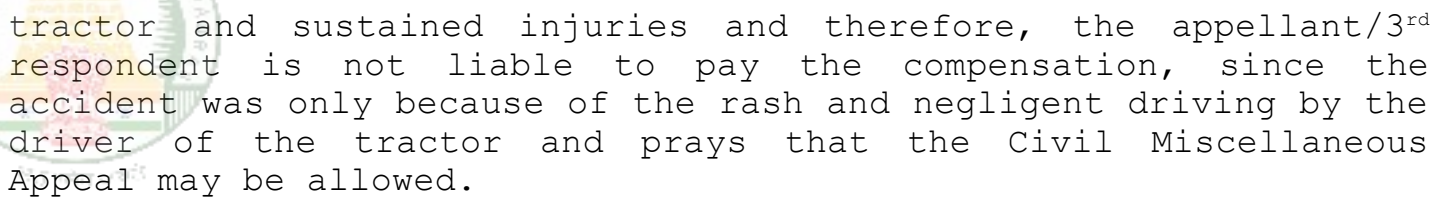
5.The learned Deputy Commissioner for Workmen Compensation, Madurai, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the tractor was responsible for the accident and awarded compensation of Rs.2,15,279/- and directed the appellant Insurance Company to deposit the said amount within a period of 30 days from the date of the receipt of a copy of the order, failing which, the appellant Insurance Company shall deposit the compensation amount together with interest at the rate of 12% from the date of the accident till the date of deposit. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

6.This appeal is admitted on the following question of law:-

"Whether the appellant Insurance Company alone shall be made to pay the entire liability and as to whether the third respondent Insurance Company, to which the Tractor was insured is also entitled to pay 50% of the amount?"

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

8.The learned counsel appearing for the appellant/3rd respondent argued that the 1st respondent/claimant travelled in the tractor and not in the trailer and he had fallen down from the



9. On the other hand, on the side of the first respondent/claimant, it is submitted that there was employer-employee relationship between the 2nd respondent/1st respondent and the 1st respondent/claimant and the trailer cannot be operated without the tractor and the accident had occurred due to the rash and negligent driving of the driver of the tractor and both the 2nd respondent/1st respondent and the 3rd respondent/2nd respondent are liable to pay compensation.

11. The next contention raised on the side of the 1st respondent/claimant is that without a tractor, trailer can not be operated and hence, both the Insurance Companies for tractor and the trailer are jointly and severely liable to pay the compensation. It is true that a trailer cannot be operated without the tractor. It is admitted fact that at the time of occurrence, the claimant travelled as a load man in the trailer. As per Ex.P1, it reveals that only due to the rash and negligent driving of the tractor, the accident occurred and thereby, the claimant had sustained injury, when he was in the trailer. But the tribunal has fastened the entire liability only on the appellant Insurance Company of the trailer, which is not correct. As the trailer cannot be operated without tractor, it is held that both the Insurance Companies for tractor and the trailer are liable to pay the compensation in the ratio of 50:50 to the claimant. In other aspects, the findings of the tribunal is confirmed.

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12. In the result, this Civil Miscellaneous Appeal is partly allowed. Both the appellant Insurance Company as well as the 3rd respondent Insurance Company are liable to pay the compensation amount as awarded by the tribunal at the ratio of 50:50. It is seen from the records that the appellant Insurance Company has already deposited the entire award amount before the Deputy Commissioner of Labour, Madurai. Hence, the 3rd respondent Insurance Company alone is directed to deposit their share of 50% of the award amount before the Deputy Commissioner of Labour, Madurai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit is being made, the 1st respondent/claimant is entitled to get the entire award amount by filing necessary application. As the appellant Insurance Company has already deposited the entire award amount before the Deputy Commissioner of Labour, Madurai, they are entitled to get back the 50% of the deposited amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To

1. The Deputy Commissioner of Labour, Madurai.

2. The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-16203[F] dated 17/04/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-16366[F] dated 19/04/2021)

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