

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	05.01.2021
Date of Judgment	19.02.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.568 of 2015andMP (MD) No.1 of 2015

The Branch Office,
M/s.United India Insurance Co. Ltd.,
5, Periya Bazar Street,
Tharapuram,
Erode District.

... Appellant/2nd Respondent

Vs.

1.R.Thangaraj

...R1/Petitioner

2.The Director,
M/s.Chamundi Foods (Pvt) Ltd.,
54/125E, Kovai Main Road,
Vellakovil-628 111.
Tharapuram,
Erode District.

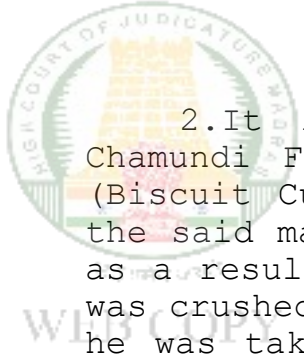
... R2/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 (1) of the Workmen's Compensation Act, 1923 against the order dated 02.01.2015 passed in W.C No.44 of 2012 on the file of the Workmen Compensation Commissioner of Labour, Madurai.

For Appellant : Mr.I.Robert Chandrakumar

For 1st Respondent : Mr.K.KumaravelFor 2nd Respondent : Dismissed, vide order,
dated 27.06.2018**JUDGMENT****(Thro' VC)**

Challenge made in this appeal is to the award, dated 02.01.2015 passed in W.C No.44 of 2012 by the Workmen Compensation Commissioner/Deputy Commissioner of Labour for Workmen Compensation, Madurai.



2.It is the case of the claimant that he was working in Chamundi Foods (P) Ltd., Vellakovil as "Operator" in DM3 Machine (Biscuit Cutting Machine) and on 17.06.2006, when he was operating the said machine, his left fingers were caught into the machine and as a result of it, his fingers were totally cut and the 4th finger was crushed and had no movements and immediately after the accident, he was taken to a Clinic at Vellakovil and then, he was taken to Chenkottai Iyyppa Clinic and then, he was referred to the Government Hospital, Tirunelveli and taking treatment and he had sustained permanent disability.

3.It is his further case that the said occurrence had occurred because of the non-observance of safety measures by the said company and the accident had occurred during the regular course of his employment. The claimant filed a petition in W.C No.44 of 2012 under the Workmen's Compensation Act, before the Deputy Commissioner of Labour, Madurai on the allegation that he was working as a Biscuit Cutting Machine Operator under the 2nd respondent and on 17.06.2006, while operating the machine suffered an accident resulting in loss of fingers.

4.The learned Deputy Commissioner of Labour, Madurai, upon consideration of oral and documentary evidence, passed an order, dated 02.01.20215, directing the appellant Insurance Company to pay a sum of Rs.1,35,636/- as compensation. Aggrieved over the said order, the Insurance Company as appellant is before this court.

5.This Civil Miscellaneous Appeal is admitted on the following substantial questions of law:-

1)Whether Workmen Compensation Commissioner committed an error in interpreting the terms of policy in fixing the extent of liability of the Insurance Company?

2)Whether the Deputy Commissioner of Labour has overlooked the contention that the liability of the insurer can be fixed only to extent of the declared salary of the employer, particularly when the premium is collected on the basis of the income?

6.Heard both sides and perused the materials available on record.

Substantial Question of Law Nos.1 and 2:

7.The dispute is with regard to quantum. The learned counsel appearing for the appellant/2nd respondent argued that the liability of the insurer can be fixed only to the extent of the declared salary of the employer, particularly when the premium is collected on the basis of the income and the Workmen Compensation claim is not a compulsory insurance as in a case of motor vehicle policy and the award of compensation passed by the tribunal is on the higher side



and prays that the Civil Miscellaneous Appeal has to be allowed.

8. On the other hand, the learned counsel appearing for the 1st respondent/claimant submitted that the claimant received Rs.1,050/- and Rs.1,000/- as overtime and totally, he received Rs.2,050/- per month and the tribunal correctly fixed the monthly salary and the award passed by the tribunal is reasonable and prays that the Civil Miscellaneous Appeal may be dismissed.

9. In this case, the appellant/2nd respondent filed the Insurance Policy (Ex.R1). On perusal of Ex.R1, it reveals that the employer paid Rs.2,59,200/- towards premium for 18 skilled workers. The learned counsel appearing for the appellant/2nd respondent submitted that already, the Insurance Company paid premium of Rs.2,59,200/- for 18 skilled workers and hence, their share is only Rs.64,500/- and the employer may be directed to pay the remaining balance amount.

10. In this case, the 1st respondent/claimant himself admitted that his employer paid Rs.2,59,200/- for 18 skilled workers. The learned counsel appearing for the appellant submitted that they are liable to pay Rs.64,500/- only and the employer has to pay the balance amount. But the tribunal has wrongly fastened the entire liability on the Appellant Insurance Company, which is not correct. Hence, in the award of Rs.1,35,536/- the Insurance Company is directed to pay Rs.64,500/- and the remaining amount has to be paid by the employer to the claimant. Accordingly, the substantial questions of law are answered.

11. In fine, this Civil Miscellaneous Appeal is partly allowed. The order passed by the tribunal in respect of pay and recovery is set aside. Out of the award amount of Rs.1,35,636/-, the appellant/2nd respondent is directed to pay Rs.64,500/- to the claimant and the remaining amount is to be paid by the owner of the concern/2nd respondent/R1. The excess amount if any shall be refunded to the appellant Insurance Company by the Deputy Commissioner of Labour, Madurai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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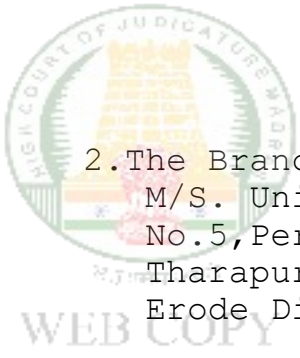
/ /2021

Sub Assistant Registrar(CS)

TO

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Deputy Commissioner of Labour,
Madurai.



2.The Branch Office,
M/S. United India Insurance Co.,Ltd.,
No.5, Periyar Bazaar St.,
Tharapuram,
Erode District.

3.The Record Keeper,
VR Section.
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to Mr.K.KUMARAVEL, Advocate (SR-6107[F] dated 19/02/2021)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-6535[F] dated
22/02/2021)

C.M.A(MD) No.568 of 2015
19.02.2021

(KUN)
KV(26.02.2021) 4P 7C