



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.969 of 2021

and

C.M.P (MD)No.9186 of 2021

National Insurance Company Limited,
175-A, Great Cotton Road,
Thoothukudi District.

.. Appellant/2nd Respondent

Vs.

1.M.Ranganathan

.. 1st Respondent/Petitioner

2.K.Ganesan

.. 2nd Respondents/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the award dated 15.07.2021 made in E.C.No.31 of 2016 on the file of the Deputy Commissioner of Labour (Authority under the Employees Compensation Act), Tirunelveli, (which was received by the Appellate Insurance Company on 23.07.2021 vide enclosed postal cover).

For Appellant : Mr.J.S.Murali

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant to enhance the award amount passed in E.C.No.31 of 2016, dated 15.07.2021, on the file of the Joint Commissioner of Labour (Authority under the Employees Compensation Act), Tirunelveli.

2. Eventhough notice served to the respondents and their name also printed in the cause list, there is no representation either by them or through counsel.

3. The Insurance Company filed this appeal to set aside the award passed in E.C.No.31 of 2016 on the file of the Joint Commissioner of Labour (Authority under the Employees Compensation Act), Tirunelveli on the ground that there was no relationship as employer and employee between R2-Ganesan and the victim/claimant.



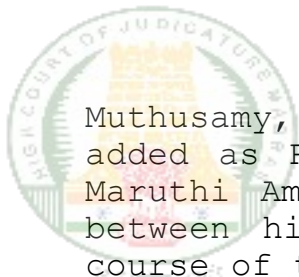
4. The case of the claimant before the Labour Court is that the claimant was working as employee under R1-Ganesan. On 05.06.2016, when he was on duty, he drove the Maruthi Amni Van bearing Registration No.TN-04-B-2700 belonged to the owner-Ganesan, at Madurai-Thoothukudi Road, suddenly the vehicle capsized near Kotturvilakku, due to which he sustained grievous injuries. Thereafter, the claimant undertook treatment as inpatient in Preethi Hospital for the injuries sustained by him. The claimant claimed that the accident occurred during the course of his work under R1/Ganesan/employee. Since there was an employer employee relationship between the claimant and R1-Ganesan, he is liable to pay the compensation.

4. Before the Tribunal, on the side of the claimant two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondents herein, one witness was examined as R.W.1 and three documents were marked as Ex.R1 to Ex.R3.

5.The Labour Court, after considering the pleadings, oral and documentary evidences and the arguments of the learned counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred during the course of his work under his employee and hence, the employee-Ganesan is liable to pay a sum of Rs.10,79,300/- as compensation and further directed the insurance company/R2 before the Labour Court, to pay the compensation as pay and recovery. Against which, the appellant/insurance company has filed this present appeal to set aside the award of compensation passed by the Labour Court.

6.The learned counsel for the appellant would submit that the claimant did not produce any document to prove that the claimant was the employer under R1-Ganesan and the accident occurred only due to the course of employment. The appellant filed counter before the Labour Court and denied the relationship between R1-Ganesan and the victim. R1-Ganesan also set *exparte*. Notice sent to R1-Ganesan by the appellant which was marked as Ex.R2 and acknowledgement card also marked as Ex.R3. Even then, R1-Ganesan has not produced any documents before the Labour Court. Hence, he prays for dismissal of the award passed by the Labour Court.

7. The Joint Commissioner of Labour also discussed that there was no documents filed by the claimant for his employment. Even after receiving the notice from the appellant, R1 has not filed any document to prove that the claimant is a paid driver under him. If the claimant has any grievance and to work out his remedy, he may approach the Motor Accident Claims Tribunal by filing claim petition under Motor Accident Claims not before the Labour Court under Employees Compensation Act. Perusal of the FIR, which was marked as



Muthusamy, who is the father of the claimant. But one Ganesan has added as R1 in the claim application as he was the owner of the Maruthi Amni Van. So the claimant did not prove the relationship between his employer and also the accident occurred only in the course of the employment.

WEB COPY

8. Hence, this Civil Miscellaneous Appeal is allowed by setting aside the award, dated 15.07.2021 passed in E.C.No.31 of 2016 by the Joint Commissioner (Authority under the Employees Compensation Act), Tirunelveli. No Costs. Consequently, connected miscellaneous petition is closed. The Appellant/Insurance Company is entitled to get refund of the deposited award amount with accrued interest and costs by filing appropriate application before the Labour Court.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

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 Deputy Commissioner of Labour,
(Authority under the Employees Compensation Act),
Tirunelveli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai (2 COPIES)

+1 CC to M/s.J.S.MURALI, Advocate (SR-40335[F] dated 23/12/2021)

**C.M.A. (MD) No.969 of 2021
22.12.2021**

SK(CO)

TR(06.01.2022) 3P 5C