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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2022

PRONOUNCED ON : 15.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. No.1869 of 2010
and C.M.P. No.1 of 2010

M/s.United India Insurance Co. Ltd.,
Oriental Complex,
No.77, AA Street,
Salem-1.

... Appellant /Opposite Party-II

versus

1.Vajravel

...1st Respondent/Petitioner

2.M/s.Vetrivel Explosives Pvt. Ltd.,
No.135-F, Kennady Nagar,
Salem - 636 005.

...2nd Respondent/ Opposite Party-I

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of Workmen's Compensation Act, 1923, against the order dated 04.12.2009, in W.C.No.660 of 2005, on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem.

For Appellant : M/s.M.J.Vijayaraaghavan

For Respondent No.1 : Mr.A.Nister Hakeem

For Respondent No.2 : No Appearance

J U D G M E N T

This appeal has been filed against the award dated 04.12.2009, made in W.C.No.660 of 2005, on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem.

2. It is the case of the first respondent/claimant that he was working as an Office Assistant with the second respondent herein whose Motor Cycle bearing Registration No.TN-30-D-6034 met with an accident on 09.05.2005 at about 08.45 p.m. near five roads, Salem, in which, the claimant sustained



grievous injuries, in the course of his employment. At the time of accident, he was earning Rs.3,000/- per month. Stating all these facts, he claimed a compensation of Rs.3,00,000/- before the Deputy Commissioner for Workmen's Compensation, Salem.

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3. In the counter affidavit filed by the appellant, they denied the accident, which was caused during the time of employment and they also denied the income and also denied the employer and employee relationship.

4. Before the Deputy Commissioner for Workmen's Compensation, Salem, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and 6 documents were marked as Exs.P.1 to P.6. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and marked 1 document as Ex.D.1 and copy of the Insurance policy was filed, which was not marked as exhibit.

5. On a careful consideration of all the materials and evidences, the Deputy Commissioner for Workmen's Compensation, after discussing the evidence and documents on record, reached the conclusion that the accident has occurred at the time of employment and at the time of accident, the claimant was working under the second respondent and directed the appellant to pay a sum of Rs.78,088/- as compensation to the claimant.

6. Against which, the appellant has filed the present Civil Miscellaneous Appeal.

7. The main contention raised by the learned counsel for the appellant is that, the rider of the motor vehicle cannot be treated as a third party and therefore, he cannot make any claim as against the insurance company and hence, he contended that the appellant, is not liable to pay compensation to the claimant. Accordingly, he prayed for interference of this Court to the award passed by the Deputy Commissioner for Workmen's Compensation, Salem. In support of his contention, the learned counsel for the appellant relied upon the judgment of this Court in the case of UNITED INDIA INSURANCE CO. LTD., vs. R.KRISHNAN reported in 2020 (2) TN MAC 417.

8. Per contra, the learned counsel for the first respondent / claimant would submit that the Deputy Commissioner of Labour has correctly found that the accident has occurred only in the course of his employment and awarded a just compensation and hence, the order passed by the the Commissioner for Workmen's Compensation, Salem, deserves no interference and thus, this appeal has to be dismissed.



9. Though the second respondent was served with notice, neither appeared in person nor through his counsel. Therefore, this Court has no other option but to proceed with the available materials.

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10. Heard the learned counsel appearing on both sides and perused the materials available on record.

11. Before going into the issue involved in this appeal, this Court is inclined to refer the decision in the case of NATIONAL INSURANCE COMPANY LTD. vs. PREMBHAI PATEL reported in (2005) 6 SCC 172, wherein our Hon'ble Apex Court has held as follows:

"The effect of the provision under Section 147(i) is that where an insurance policy taken by the owner of the motor vehicle covering the Act liability under proviso to Section 147(i)(b), the liability of the insurance company will be confined to that arising under the Workmen's Compensation Act."

12. The Commissioner of Workmen's Compensation, Salem, after discussing elaborately, has held that the accident had occurred only during the course of employment and had arrived at a just and proper compensation. The claim of the claimant is covered under the provisions of Workmen's Compensation Act and it is also covered in terms of Section 147 (i)(b) of the Motor Vehicles Act. Hence, this Court does not find any infirmity or illegality in the order passed by the Deputy Commissioner for Workmen's Compensation, Salem and the same does not require any interference.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the order dated 04.12.2009, in W.C.No.660 of 2005, on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem, is hereby confirmed. The claimant / first respondent is entitled to withdraw the entire amount deposited before the Deputy Commissioner of Labour, Salem to the credit of W.C.No.660 of 2005. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sri



To

1.The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour), Salem.

2.The Record Keeper,
V.R. Section, High Court,
Chennai.

C.M.A. No.1869 of 2010
and C.M.P. No.1 of 2010

SSN(CO)
SB(06/07/2022)