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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.3517 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Rai's Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home),
Anna Nagar, Chennai - 600 040.

...Appellant/
2nd Opp. Party

v.

1.A.Mariyadoss

..1st Respondent/Applicant

2.Asan Ali

..2nd Respondent/1st Opp. Party

Prayer: Civil Miscellaneous Appeals filed under Section 30 of Workmen's Compensation Act, 1923, against the order in E.C.No.379 of 2012 dated 15.03.2017 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour - II, Chennai.

For Appellant : Mr.N.Vijayaragavan

For R1 : Mr.Terry Chella Raja
for Mr.K.M.Ramesh

JUDGMENT

The 2nd respondent in E.C.No.379 of 2012 which was adjudicated by the Deputy Commissioner for Employees Compensation Labour - II, Chennai is the appellant herein.

2.The applicant was a driver under the 1st respondent and was driving a TATA ACE van bearing registration No.TN-04-AD-6889. On 19.04.2012 at around 5.30 p.m., while he was discharging his duty and was in the course of employment as driver for the 1st respondent and driving the vehicle of the 1st respondent at Puzhal - Maduravayil Bye Pass Road, the vehicle which was moving in the front applied sudden brakes and the



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applicant dashed against the said vehicle and suffered injuries. He was taken to Government Hospital for treatment. As in patient, he took treatment from 19.04.2012 to 13.06.2012. It is claimed that he is still taking treatment for the injuries suffered.

3. With respect to the accident which occurred, the Inspector of Police, Madhavaram Police Station, Chennai, had registered the First Information Report in Crime No.229/GNT/3/2012 under Sections 279 and 337 IPC.

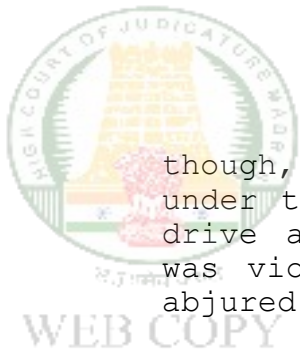
4. It is the case of the claimant in the Employees Compensation Case before the Deputy Commissioner of Labour - II that the accident occurred when he was discharging duty as driver of the 1st respondent and therefore, he was entitled to claim compensation under the aforementioned Employees Compensation Act, 1923.

5. The 2nd respondent / appellant herein joined issue with the claim petition and this necessitated trial being undertaken. During the course of the trial, the applicant A. Mariadoss, was examined as PW-1. The doctor tendering opinion regarding the injuries suffered and the consequent disability was examined as PW-2. On the side of the 1st and 2nd respondents, three witnesses were examined. The applicant marked Exs. P1 to P10 and the respondents marked Exs. R1 to R7. The relevant documents would be Ex. P6, the driving license and Ex. P7, the report of the Motor Vehicle Inspector. Incidentally, Ex. P4 which is the registration certificate of the vehicle must also be examined. On the part of the respondent, Ex. R5 which is the extract of the driving license and the insurance policy, Ex. R6 would be relevant to determine the issues raised.

6. The Deputy Commissioner of Labour - II, proceeded to framed necessary issues. He affirmed that the claimant was actually an employee under the 1st respondent and also affirmed that the accident occurred when he was discharging his duty as a driver and also affirmed the age as stated by the claimant and thereafter proceeded to determine the compensation, which is to be paid for the injuries suffered.

7. With respect to the compensation, which has to be paid, he took into consideration the fact that the claimant was in hospital as in patient from 19.04.2012 to 13.06.2012 for more than two months and also examined the nature of injuries suffered namely, fracture in the shaft of the right femur in the right leg. Naturally, that would have affected his further functioning as driver, which was a skill he had acquired.

8. The appeal has been necessitated owing to the fact that



though, it had been admitted that the claimant was a driver under the 1st respondent, he did not have the necessary badge to drive a transport vehicle and therefore, it was claimed there was violation of a policy condition and the insurance company abjured their liability.

9. In so far as the compensation which had been granted, the Tribunal had determined that the age of the insured A. Mariadoss was 27 years and determined the disability at 65%. The monthly income was determined at Rs. 6,784/- and on that basis a sum of Rs. 5,65,055/- ($60/100 \times 213.57 \times 6784 \times 65/100 = 5,65,054.96$) granted.

10. The appellant is deeply aggrieved by the fact that the Deputy Commissioner of Labour, had not taken into consideration, the breach of policy, particularly, under Section 149 of the Motor Vehicles Act, 1988 and has claimed that the principle of pay and recovery should not have been applied. It had been contended in the absence of a valid badge to drive a transport vehicle, the liability should not be passed on the insurance company to pay the compensation amount.

11. Heard arguments advanced by Mr. N. Vijayaragavan, learned counsel appearing on behalf of the appellant and Mr. Terry Chella Raja learned counsel appearing on behalf of the 1st respondent.

12. The scope of the appeal is quite narrow. It is a fact that the 2nd respondent herein was a driver under the 1st respondent. It is a fact that he was driving a vehicle belonging to the 1st respondent and was discharging his duty as driver of the 1st respondent. Therefore, the fact that he was driving the vehicle in the course of his employment, cannot be either disputed or denied. A claim under the Employment Compensation Act, therefore arises for consideration. The age of the claimant and his monthly income are neither disputed nor denied. The quantum of compensation granted again is not disputed or challenged in this appeal.

13. The issue raised in this appeal, is that the 2nd respondent did not have the authority to drive a transport vehicle, which requires a specific badge to be given and an endorsement made on the driving license of the driver.

14. However, it is also to be pointed out that the vehicle which was driven by the 1st respondent was a light motor vehicle a TATA ACE and a badge is required only for a heavy vehicle and if such an endorsement is not there on the driving license, quite reasonably the insurance company can claim there was violation of Section 149 of the Motor Vehicles Act, 1988. In the instant case, the vehicle was not a heavy vehicle and was a



light motor vehicle and such a badge cannot be insisted upon.

15. Reliance is also placed on the judgment of the Hon'ble Supreme Court in (2017) 14 SCC 663, Mukund Dewangan v. Oriental Insurance Company, wherein, the position of law has been affirmed that for light motor vehicle endorsement a badge affirming authority to drive it as a transport vehicle is not required and that absence of such a badge cannot be construed to be a violation of any of the stipulations under Section 149 of the Motor Vehicles Act, 1988.

16. The compensation granted by the Deputy Commissioner of Labour - II is therefore upheld with the above observations. The Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

smv

To:-

The Deputy Commissioner of Labour - II,
Chennai.

+1cc to M/s.K.M.Ramesh, Advocate, S.R.No.14325

CMA.No.3517 of 2017

SKM(CO)
RGA(30/03/2022)