



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. (MD)No.1376 of 2008

The Divisional Manager,
National Insurance Company Limited,
North Veli Street, Madurai.

... Appellant/
2nd Respondent

Vs.

1.Chellakkannu

...1st Respondent/Claimant

2.Tr.Muthumaraikayar

...2nd Respondent /
1st Respondent

(2nd Respondent was set an exparte hence no notice
is necessary to him)

Prayer: This Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, to set aside the award passed in W.C.No.20 of 2005 on the file of the Commissioner for Workmen Compensation, Madurai, dated 11.04.2008 and received on 29.04.2008.

For Appellant : Mr.S.Kumar

For Respondents : No Appearance

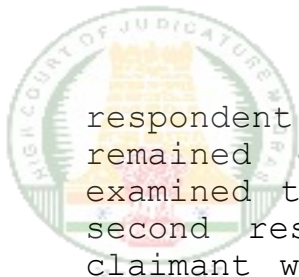
JUDGMENT

This appeal is preferred by the Insurance Company challenging the award of the Commissioner for Workmen Compensation made in W.C.No.20 of 2005.

2.The first respondent/claimant sought for compensation for the injuries caused to him, while he was working as a Loadman in the lorry bearing Registration No.TN-45D-3331 belonging to the second respondent and insured with the appellant Insurance Company.

3.Despite service, the claimant has not appeared before this Court either in person or through counsel, dully instructed.

4.The said claim petition was resisted by the Insurance Company contending that the claimant was not an employee of the second



respondent herein at the time of accident. The second respondent remained ex-parte before the Tribunal. The Insurance Company examined the Investigation Officer as R.W.1, who claimed that the second respondent, owner of the vehicle informed him that the claimant was not employed with him. The Insurance Company did not take any steps to examine the owner of the vehicle. The Commissioner for Workmen Compensation rejected the contentions of the Insurance Company for lack of evidence.

5.Mr.S.Kumar, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Commissioner was not justified in rejecting the contention of the Insurance Company. He would also point out that the second respondent herein, who figured as the first respondent before the Commissioner remained ex-parte resulting in an award being passed against the Insurance Company. I am unable to accept the contention of the learned counsel for the appellant, inasmuch as it is duty of the Insurance Company to prove non-employment. The Insurance Company has not chosen to examine the owner of the vehicle to prove the said fact. The evidence of R.W.1, Investigating Officer is only hear say and the same cannot be accepted.

6.I am, therefore unable to fault the Commissioner for Workmen Compensation for having rejected the contention of the Insurance Company. Therefore, the Civil Miscellaneous Appeal fails and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner for Workmen Compensation,
Madurai.

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