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C.M.A(MD)No.186 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2022

Pronounced on : 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.186 of 2010

Branch Manager,
New India Assurance Company Ltd.,
66, W.P.Road,
Trichirappalli.

...Appellant/ 2nd Respondent

Vs

1.Murugesan

... 1st Respondent/Petitioner

2.R.Kannan

... 2nd Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act to set aside the award dated 19.12.2006 made in W.C.No.58 of 2006 on the file of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.B.Prasana Vinoth

For R2 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in W.C.No. 58 of 2006 on the file of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli. The appellant herein is the second respondent, first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

The petitioner was working as a driver in an auto bearing registration number TN 45 M 3622 that belong to the first respondent. On 25.01.2006, when the petitioner was riding the auto near Trichy junction over bridge, along the Trichy to Madurai main road, a van that came behind that auto, hit against the auto and the auto capsized. The petitioner sustained injuries. He was taken to the Government Hospital, Trichy. The petitioner was aged about 33 years and was earning Rs.5,000/-. He sustained permanent disability and he claimed a sum of Rs.5 Lakhs as compensation.



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3. Brief substance of the counter filed by the second respondent is as follows:

There is no relationship of employer and employee between the petitioner and the first respondent. The first respondent has not filed any claim petition before the second respondent. The petitioner has to prove that the vehicle was insured with the second respondent. The petitioner has to prove that he was having valid driving licence. The manner of accident is denied. The petitioner has to prove that he was the driver of the vehicle. The age, income, nature of injuries, mode of treatment, period of treatments are all denied. The claim is excessive.

4. The first respondent was set as ex-parte. Two witnesses were examined and seven documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Labour Commissioner awarded a sum of Rs.1,57,598/- as compensation.

5. Against the award, the second respondent filed this appeal on the following grounds:



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The Labour Commissioner failed to note that the mandatory notice under Section 10 of the Workmen Compensation Act, was not given to the insurer. The Labour Commissioner failed to note that there is no proof for the relationship of employer and employee between the first and second respondent. The Tribunal failed to consider that the driver of the vehicle was not having valid driving licence.

6.This Civil Miscellaneous Appeal was admitted on the following Substantial Questions of Law:

1. Whether the appellant Insurance Company is liable to pay compensation when the driver of the vehicle involves in the accident was not having a valid driving license?

7.On the side of the appellant, it is stated that the driver of the vehicle was not having valid driving licence. The driving licence of the claimant expired in the year 2001. There was no driving licence on the date of accident and the insurance company is not liable to pay compensation.



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8. On the side of the appellant a judgment of the Hon'ble Supreme Court made in Civil Appeal Nos. 7220 and 7221 of 2011, is cited.

" 15. We are of the view that once the basic care of verifying the driving licence has to be taken by the employer, though a detailed enquiry may not be necessary, the owner of the vehicle would know the validity of the driving licence as is set out in the licence itself. It cannot be said that thereafter he can wash his hands off the responsibility of not checking up whether the driver has renewed the licence."

9. On the side of the first respondent it is stated that there is no evidence on the side of the appellant to prove that the first respondent was not having valid driving licence. The private investigator engaged by the insurance company was not examined. The first respondent / claimant has marked the driving licence as Ex.P.3. The respondent has not taken any steps to examine any witness to prove that the driving licence was not renewed.

10. A perusal of the records reveals that the appellant failed to examine the claimant as to the expiry of the driving licence. Ex.P3, the driving licence was valid up to 27.08.2001. Whether the driving licence was renewed or not,



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was not elicited in the evidence of P.W.1. The same was not questioned by the appellant in the cross examination of P.W.1. The appellant has not chosen to examine any witness to prove that the driving licence was not renewed. Only in the appeal, the appellant has chosen to raise this point. This question is only a question of fact and not a question of law and hence it is decided that the issue raised by the appellant is not sustainable.

11. There is no serious dispute regarding the quantum. Hence it is decided that there is nothing sufficient enough to interfere with the orders of the Tribunal and the appeal is dismissed.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.1,57,598/- (Rupees One Lakh Fifty Seven Thousand Five Hundred and Ninety Eight only) which shall carry interest at the rate of 12% per annum.

(ii) The Appellant / Insurance Company is directed to deposit the entire compensation of Rs.1,57,598/- (if not already deposited) in W.C.No.58 of 2006 on the file of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli, within a period of 30 days from the



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date of receipt of a copy of this order, failing which, the appellant / insurance company is directed to deposit the amount together with interest at the rate of 12% per annum from the date of accident till the date of deposit.

(iii) On such deposit being made by the appellant / Insurance company, the first respondent herein/claimant is permitted to withdraw their share of Rs.1,57,598/- (Rupees One Lakh Fifty Seven Thousand Five Hundred and ninety Eight only)with proportionate interest and cost.

16.12.2022

Index: Yes / No

Internet : Yes / No

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To

1.The Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-delivery Judgment made in
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