



C.M.A.(MD)No.259 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.11.2022

Delivered On : 15.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.259 of 2010

National Insurance Company Limited,

Through its Divisional Manager,

S.N.High Road, Tirunelveli Junction.

.. Appellant /2nd Respondent

Vs.

1.R.Radhakrishnan

... 1st Respondent / petitioner

2.A.Perumalsamy

... 2nd respondent / 1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, against the order, dated 30.10.2008, made in W.C.No.76 of 2006, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant

: Mr.D.Sivaraman

For Respondents

: Mr.P.Subbaraj for R1

: No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 30.10.2008, made in W.C.No.76 of 2006, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli. The appellant herein is the second respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in W.C.No.76 of 2006, is as follows:

The petitioner was working as a driver in a bus bearing Registration No.TDO-1758 that belonged to the first respondent. On 14.12.2001, at about 7.15 am., when the petitioner was travelling as an additional driver in the bus, when the bus was nearing Vagaikulam, J.D. Nagar, when the driver-Murugan was driving the bus, two persons, one of them was the owner of the mini bus, bearing Registration No.TN-72-W-6374, came in a motorcycle and they waylaid the mini bus, and those two persons damaged the bus. The petitioner and others were injured. The petitioner was taken to Government Hospital Sankarankovil, then, he was taken to Tirunelveli Medical College Hospital and



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took treatment as inpatient. The accident has happened during the course of employment. The petitioner sustained 55% disability and he claimed a sum of Rs.4,58,883/- as compensation.

3. A brief substance of the counter filed by the second respondent, in W.C.No.76 of 2006, is as follows:

The petitioner is not entitled to any compensation. The second respondent is not a necessary party. No accident has happened, it was only an incident that took place due to some previous enmity. The petitioner did not sustain injury, while he was driving the vehicle. This incident cannot be named as a motor vehicle accident. The monthly income is denied. The incident is no way connected with the first respondent. Hence, the second respondent is not liable to pay compensation.

4. 2 witnesses were examined and 6 documents were marked, on the side of the claimant. 1 witness was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.1,50,132/- as compensation to be paid by the second respondent.



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5. Against the award, the second respondent / appellant has filed both the appeals on the following grounds:-

The Labour Commissioner failed to consider that the claim petition is not maintainable under the provision of Workmen Compensation Act. The Labour Commissioner is wrong in giving a finding that the claimant was Workman and that the incident has happened during the course of employment. It was only a rival bus owner and his man, who attacked the petitioner and others with some prior motive and the incident cannot be considered as an accident in the course of employment. It is only an assault and not an accident. No additional premium was paid by the second respondent, covering the risk of the first respondent, who was a substitute driver.

6. This Court, by its order, dated 26.10.2010, has admitted the appeal on the following substantial questions of law:-

“1. Whether the Commissioner for Workmen's Compensation is right in holding that the first respondent herein was a workman under the second respondent herein as per the provisions of the Workmen's Compensation Act, 1923?



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2. Whether the impugned occurrence can be construed as an accident arising out of and in the course of employment of the first respondent herein?

3. Whether the Commissioner for Workmen's Compensation is right in passing the award against the appellant while the risk occurred to the first respondent herein was not covered by the terms of the policy of insurance issued to the second respondent herein in respect of the motor vehicle involved in the accident?

4. Whether the Commissioner for Workmen's Compensation is right in passing an award against the appellant alone without passing the award against its insured?"

Issue Nos.I & 2:-

7. On the side of the appellant, it is stated that the Labour Commissioner is wrong in giving a finding that the claimant was a Workman under the second respondent herein. Admittedly, the claimant was not on duty, he was only travelling in the bus and was not driving the bus. The employer and employee relationship was not proved. The driver of the bus, who rode the vehicle, at the time of accident, by name-Murugan was not examined as a witness. There was no evidence to prove that the claimant travelled as a



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substitute driver. It is not a duty of the appellant, to disprove the relationship of employer and employee between the claimant and the owner of the vehicle.

It is the duty of the claimant to prove the employer and employee relationship.

8. It is seen that in the counter filed by the appellant, before the Labour Commissioner, an allegation that the claimant was not an employee of the owner of the vehicle was not mentioned. The owner of the vehicle remain exparte before the Labour Commissioner. There is no rebuttal evidence on the side of the respondent. The petitioner was examined as P.W.1. In the above circumstances, it is decided that the employer and employee relationship was proved by the claimant.

Issue No.II:-

9. On the side of the appellant, it is stated that the accident was not in the course of employment. The impugned occurrence cannot be construed as an accident arising out of or in the course of employment. It is stated that there is no evidence to prove that the claimant travelled as a substitute driver. The driving licence of the claimant was marked as Ex.P5. The owner of the vehicle remained exparte. The claimant filed a sworn affidavit, wherein, he has stated that he was working under the owner of the vehicle as a driver. The claim of



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the claimant is that the claimant travelled in the bus to change shift with the driver-Murugan.

10. The Labour Commissioner referring to a judgment of Kerala High Court reported in 2005-2-TNMAC-80 (DB), wherein, it is held as follows:-

“ Workmen's Compensation Act, 1923, Section 3 – Accident arising out of and in the course of Employment- Deceased workman, a conductor of bus – Deceased expected to be start its trip at 3.30 a.m, therefore, staying in bus during night alongwith Driver and Cleaner – Accident occurred when deceased went to nearby stream for taking bath – Death occurred due to drowning- Necessarily it has to be taken as accident arising in any way out of his employment and has its origin in employment – It cannot be stated that death not arisen out of and in course of employment. ”

11. On the basis of this judgment, the Labour Commissioner has given a finding that the occurrence has happened during the course of employment, which is reasonable.



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WEB CORN **Issue No.3:-**

12. On the side of the appellant, it is stated that the occurrence is only an incident that took place due to the previous motive and the occurrence is not an accident and that there is no policy coverage for the said incident. It is further stated that the occurrence is no way connected with the owner of the vehicle. The occurrence has nothing to do with the driving of the vehicle. So, the occurrence cannot be named as one that arose out of the employment.

13. On the side of the claimant, it is stated that the course of employment starts from leaving of the house and till the employee reaches back home. Policy copy was marked as Ex.P3 and Ex.R1. The occurrence is an attack by a rival mini bus driver and a mini bus owner. Hence, it is decided that the occurrence is to be treated as an accident in the course of employment. Since the occurrence arise out of business rivalry, the owner of the vehicle and the vehicle itself are connected with the occurrence. Hence, it is decided that the occurrence is an accident and not a mere incident.



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14. On the side of the appellant, it is stated that there is no coverage for a substitute driver and the policy covers only a driver and cleaner of the bus and hence, the claimant is not entitled to claim compensation.

15. A perusal of the policy reveals that the premium was paid for passengers. In the above circumstances, the allegation that the policy covers only driver and cleaner is not sustainable. Hence, it is decided that the claimant travelled in the vehicle as a substitute driver.

16. On the side of the appellant, it is stated that the Labour Commissioner is wrong in giving a finding that the appellant is liable to pay compensation, without fixing the liability on the bus owner.

17. A perusal of the records reveals that the Tribunal has not exonerated the first respondent, since the insurance policy is effective, at the time of accident. The Tribunal fixed the amount to be paid by the second respondent. The order of the Labour Commissioner implied that the second respondent has to pay the compensation on behalf of the first respondent. Hence, it is decided that the questions raised by the appellant are not sustainable.



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18. Most of the questions raised by the appellant is a question of fact and not a questions of law. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Labour Commissioner. Hence, this Appeal is dismissed.

15.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.259 of 2010

15.12.2022