

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.10.2022

Delivered On : 04.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.658 of 2010

The Divisional Manager,
New India Assurance Company Ltd.,
Madurai. Appellant / 2nd Respondent

Vs.

1.K.Sivakumar @ Kumar ... 1st Respondent / Petitioner

2.N.Sekar ... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, challenging the award, dated 17.03.2010, made in W.C.No.233 of 2009, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 : Mr.N.S.Ponnaiah

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award, dated 17.03.2010, made in W.C.No.233 of 2009, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the main claim petition.

2. Brief substance of the petition, in W.C.No.233 of 2009, is as follows:-

The petitioner was working as a Cleaner cum driver in a Van, bearing Registration No.TN-59-K-8744 that belonged to the first respondent. On 14.06.2004, when the petitioner was drove the vehicle along the Madurai – Alagarkoil road, near Tiruvilanpatti, a Hero Honda motorcycle that came from the opposite direction in a rash and negligent manner was about to dash against the Van, to avoid hitting the two wheeler, the petitioner turned the vehicle to the right side and the mini van capsized. The petitioner sustained injuries, he was admitted in Madurai Rajaji Hospital, from 14.06.2004 till 20.07.2004 as inpatient.

Subsequently, he took treatment as out patient in a private hospital. The petitioner could not continue the job. The petitioner was earning Rs.2,500/- as monthly salary and Rs.100/- per day as batta. The petitioner claimed a sum of Rs.4,05,390/- as compensation.

3. The first respondent remained exparte.

4. Brief substance of the counter filed by the second respondent, in W.C.No.233 of 2009, is as follows:-

The petitioner is not having valid driving licence. The age, income, injuries are to be proved. The petitioner sustained only simple injuries. The petitioner has to prove that the vehicle was insured with the respondent and the policy was inforce. The petitioner has to prove the employer and employee relationship.

5. On the side of the petitioner, 2 witnesses were examined and 10 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. The Deputy Commissioner of Labour awarded a sum of Rs.1,25,277/- as compensation.

6. Against the award, the second respondent /appellant has preferred this appeal on the following grounds:-

The Deputy Commissioner of Labour is wrong in fastening the liability upon the appellant. The claimant was having only a Learner Licence and he was not entitled to drive the mini lorry. The version of the claimant that he was supported and instructed by another driver, who had a licence was not proved through evidence. There is violation of policy condition. Only after a lapse of 2 years from the date of accident, the claimant got a licence. The relationship of employer and employee was not proved by the claimant.

7. This Court, by order dated 14.06.2010, admitted the Appeal on the following substantial questions of Law:-

“ 1) Whether the Insurance Company is liable under the Workmen Compensation Act, when the claimant / driver was not having valid driving license to drive the vehicle?

2) Whether the claimant / driver has proved that he was accompanied and instructed by another driver holding effective license, when that driver was not examined before the learned Deputy Commissioner of Labour?

3)Whether the Insurance Company is liable under the Workmen Compensation Act, when the claimant / driver has not established employer, employee relationship between himself and the insured?

4) Whether the learned Deputy Commissioner of Labour is correct in constructing the absence of the insured amounts to acceptance of the contentions made by the claimant in the claim petition?”

Issue Nos.1 and 2:

8. On the side of the appellant, it is stated that the claimant is alleged to have worked as a cleaner cum driver, but, the claimant was not having valid driving licence, at the time of accident. He was having only L.L.R, he cannot drive heavy vehicle and the owner alone is to pay compensation.

9. Non-renewal of the licence, amount to non-availability of driving licence. A judgment of the Hon'ble Supreme Court reported in 2020-ACJ-3000 (Beli Ram V. Rajinder Kumar and another) is cited, wherein, it is stated as follows:-

“If the driving licence is not renewed within thirty (30) days, it was held, the driver neither had an effective

driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the licence is renewed retrospectively.”

10. Another judgment of this Court made in C.M.A.Nos. 3506 and 3507 of 2014 (Minor.Preethi V. K.N.Manokaran and others), dated 18.11.2020, is cited, wherein, it is stated as follows:

“14.A three Judges Bench of the Hon'ble Apex Court in a judgment reported in 2020 SCC Online SC 769 [Beli Ram Vs. Rajinder Kumar], has held that when driving license is not renewed and accident has occurred after expiry of driving license and the driver of the vehicle did not possess driving license, the Insurance Company is not liable to pay compensation. The contention of the learned counsel appearing for the appellants that the judgment of the Hon'ble Apex Court referred to above applies only to the claim made under the Workmen Compensation Act and not for the claim made under Motor Vehicles Act is without merits. The Hon'ble Apex Court in the said judgment has held that when the license is not renewed, it amounts to driver not possessing driving license and Insurance Company is not

liable to pay compensation. The said principle applies not only for the claim made under the Workmen Compensation Act, but also for claim made under the Motor Vehicles Act. In view of the above materials, there is no error in the finding of the Tribunal warranting interference by this Court.”

11. On the side of the respondents, it is stated that the judgment cited on the side of the appellant is not applicable to the fact of the present case. The claimant was having L.L.R licence. The vehicle concerned was not a heavy vehicle. Another vehicle driver, who was having valid driving licence accompanied the claimant. There is no violation of policy conditions. This defence was not raised by the appellant, before the Deputy Commissioner of Labour.

12. Ex.P4 is the copy of LLR in the name of the claimant. Ex.P5 is the copy of driving licence in the name of the claimant. Ex.P5 is taken after 2 years from the date of accident. The appellant has not chosen to examine anybody from the R.T.O, to prove that there was no valid driving licence, at the time of accident. In the petition and in the evidence of P.W.1, it is stated that the claimant was driving the vehicle under the guidance of another driver, by name, Manthiramoorthy.

13.1. On the side of the appellant, it is stated that the said Manthira moorthy was not examined as a witness and that the claimant has failed to prove that the claimant drove the vehicle only with the assistance of the another driver, who was having a valid driving licence.

13.2. The appellant ought to have raised these points before the Deputy Commissioner of Labour. Though the claimant has stated that he was accompanied by another driver-Manthiramoorthy, the appellant has not chosen to deny the same in the counter. The questions raised by the appellant cannot be named as a question of law. Hence, this questions are not sustainable.

Issue Nos.3& 4:

14. On the side of the appellant, it is stated that there was no employer and employee relationship between the claimant and the first respondent. The contention of the claimant is that he was working as a cleaner cum driver in the Van that belonged to the first respondent. Admittedly, on the date of accident, the claimant was driving the vehicle. The first respondent remained exparte. The appellant has not chosen to

examine the first respondent as a witness. Hence, it is decided that there was employer and employee relationship. The questions raised by the appellant are not sustainable, as they are not questions of law.

15. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Commissioner of Workmen Compensation- Deputy Commissioner of Labour, Madurai. Hence, this Appeal is dismissed. No costs.

04.11.2022

Index:Yes/No
Internet:Yes/No
Ls

To

- 1.The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.THARANI.,J.

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Pre-delivery Judgment made in
C.M.A(MD)No.658 of 2010

04.11.2022