



C.M.A(MD)No.283 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.09.2022

Pronounced on : 10.10.2022

**CORAM**

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

**C.M.A(MD)No.283 of 2013**

The Branch Manager,  
Oriental Insurance Company Limited,  
Bharathidasan Rod,  
Condonement,  
Thiruchirapalli.

...Appellant / 2nd respondent

Vs

1.A.Mani

... 1st respondent / petitioner

2.Kannan

3.K.Kalaiselvi

4.Revathi

5.Geerthana

6.Ramya

... 2 to 6 respondents / 1,3 to 6 respondents

**PRAYER :-**

This Civil Miscellaneous Appeal is filed under Section 30 of The Workmen's Compensation Act, 1923, to set aside the order dated 19.09.2008 of the Deputy Commissioner for Workmen's Compensation, Trichy, passed in W.C.No.164/2003 and allow this appeal with costs.



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For Appellant : Mr.C.Jawahar Ravindran  
For R1 : Mr.K.Muthumalai

### **JUDGMENT**

This Civil Miscellaneous Appeal is filed against the order in W.C.No. 164 of 2003 on the file of the Deputy Commissioner for Workmen's Compensation, Trichy. The appellant is the second respondent, first respondent is the petitioner /claimant, respondents 2 to 6 are respondents 1,3 to 6, in the claim petition.

2.Brief substance of the petition is as follows:

The petitioner was working as a cleaner cum load man in a lorry bearing registration number TN 51 W 1069. On 15.07.2001, when the petitioner was traveling in the loaded lorry, when the lorry was nearing Pulvayal, the lorry capsized. The petitioner sustained injuries. He was admitted in Pudukkottai Government Hospital. The age of the petitioner at the time of accident, was 30 years. The petitioner claimed a sum of Rs.3,00,000/- as compensation. The respondents 1,3 to 6 were set ex-parte.



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

The manner of accident, time, date are all denied. The petitioner travelled in the vehicle only as a passenger. The injuries and the mode of treatment are all denied. The petitioner sustained only simple injuries. The age, income and profession are to be proved.

4. Two witnesses were examined and seven(7) documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondents. The Labour Commissioner ordered the second respondent to pay a compensation of Rs.50,539/- as compensation.

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

The Labour Commissioner erroneously fixed the liability against the appellant. The commissioner failed to note that the claimant was not working as a cleaner in the second respondent lorry at the time of accident. The evidence of P.W.2 ought to have been discarded. The claimant was having only simple injuries. The award is excessive.



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6.This Civil Miscellaneous Appeal was admitted on 07.03.2013, on the following substantial questions of law:

1.Whether the learned commissioner erred in holding that the claimant was a workman employed under the second respondent's lorry?

2.Whether the learned Commissioner has failed to hold that the claimant was not a workman employed in the 2nd respondent's lorry?

3.Whether the learned Commissioner has failed to hold that the claimant has not sustained any loss of earning power?

4.Whether the learned commissioner has failed to hold that the claimant has sustained only simple injury;

5.Whether the learned Commissioner failed to hold that the claimant is not entitled to any compensation from this appellant?

7.Issue No.1,2 and 5:

On the side of the appellant, it is stated that there was no employer-employee relationship between the claimant and the owner of the vehicle and that the claimant travelled only as a passenger in the lorry.

8.On the side of the claimant it is stated that the claimant travelled only as a load man cum cleaner. The appellant has not chosen to examine the owner of the vehicle. The appellant examined only an official of the owner of



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the vehicle. No notice or summon was sent to the owner of the vehicle by the appellant to prove that the claimant was not an employee.

9.This questions are questions of fact and not questions of law and hence these questions are not sustainable.

10.Issue No.3 and 4:

On the side of the appellant, it is stated that the claimant did not sustain any loss of earning power. He sustained only simple injuries and that he is not entitled to any compensation from the appellant.

11.On the side of the respondent it is stated that the respondent sustained fracture and the Doctor was examined. The Doctor gave evidence that the petitioner sustained 24% disability.

12.Though the doctor has given a certificate that the claimant sustained 24% partial permanent disability, the Labour Commissioner has fixed the disability only at 15% which is reasonable.



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13.All these questions are questions of fact and not questions of law. In the above circumstances, there is no question of law to be decided in the appeal. Hence this appeal is dismissed. No costs.

**10.10.2022**

Index: Yes / No  
Internet : Yes / No

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To

- 1.The Deputy Commissioner for Workmen's Compensation, Trichy.
- 2.The Record Keeper, Vernacular Records,  
Madurai Bench of Madras High Court, Madurai.



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**R. THARANI, J**

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**10.10.2022**