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C.M.A(MD)No.1104 of 2021:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A (MD) Nos.1104 and 1105 of 2021

and

C.M.P (MD) Nos.10610 and 10611 of 2021

C.M.A(MD)No.1104 of 2021:

M/s.National Insurance Co., Ltd.,
through its Divisional Manager,
Sub Collector Office Road,
Kalaingar Malligai first floor,
Dindigul.

... Appellant/Third respondent

Vs.

1.Chandru
2.Boominathan
3.Habeeb Rehman

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent
... 2nd Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the award made in E.C.No.70 of 2018, dated 24.08.2021, and the same was amended on 22.09.2021, on the file of the Deputy Commissioner of Labour Court (Commissioner of Labour), Dindigul.

C.M.A(MD)No.1105 of 2021:

M/s.National Insurance Co., Ltd.,
through its Divisional Manager,
Sub Collector Office Road,
Kalaingar Malligai first floor,
Dindigul.

... Appellant/Third respondent

Vs.

1.Thamarai Kannan
2.Boominathan
3.Habeeb Rehman

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent
... 2nd Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the award made in E.C.No.71 of 2018, dated 24.08.2021, and the same was amended on 22.09.2021, on the file of the Deputy Commissioner of Labour Court (Commissioner of Labour), Dindigul.

In both cases:

For Appellant	: Mrs.P.Malini
For RR 1 & 2	: Mr.P.R.Prithviraj
For R3	: No appearance



COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the award made in E.C.Nos.70 and 71 of 2018, dated 24.08.2021, which were amended on 22.09.2021, on the file of the Deputy Commissioner of Labour, Dindigul.

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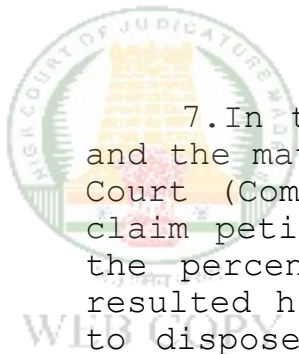
2.The Insurance Company is the appellant in both the appeals and the first respondent in both petitions are the petitioners in the claim petitions. The third respondent is the registered owner of the vehicle. The second respondent is the previous owner. However, premium was paid in the name of the third respondent.

3.Heard the learned counsel for the appellant/Insurance Company, the learned counsel for the first respondents/claimants and the learned counsel for the second respondent/owner of the vehicle and perused the materials placed before this Court.

4.The learned counsel for the appellant/insurance company could contend that there is no employer-employee relationship between the first respondents/claimants and the second respondent/owner of the vehicle and there is no positive evidence to show the injury sustained by the claimants/petitioners is scheduled injury as defined under Employees Compensation Act.

5.Per contra, learned counsel for the first respondents/claim petitioners could contend that Ex.P9 and Ex.C1 having been obtained from the medical board, the Commissioner has rightly relied upon and fixed the disability at 23%. After perusing the Ex.C1, I find that both the locomotive disability as well as partial permanent disability by the doctor has marked as NIL. However, he has also opined that the disability is 23%. In the absence of any positive evidence available in the record, I find that in the interest of justice, an opportunity has to be given to the claim petitioners to show and demonstrate the injury sustained by him in the road transport accident is scheduled injury as defined under the Employees Compensation Act.

6.The claim petitioners are hereby permitted to adduce evidence to show that the injury sustained by them has resulted in loss of earning capacity so as to be compensated under the Employees Compensation Act. The tribunal has held that merely because the claim petitioner in CMA(MD).No.1104 of 20221 is the brother of the owner of the vehicle, that does not itself give rise to presumption that there is no employer-employee relationship and relied upon the decision of the Karnataka High Court reported in **2006 ACJ 850**. Accordingly, the prime point as to whether the maintainability of compensation petition before the Workmen Compensation Commissioner is held to be maintainable. However in the absence of any positive evidence, either oral or in the absence of any undertaken in Ex.C1, I find that the claim petitioner must be given opportunity.



7.In the result, these Civil Miscellaneous Appeals are allowed and the matter is remitted back to the Deputy Commissioner of Labour Court (Commissioner of Labour), Dindigul, for reconsideration. The claim petitioner is permitted to adduce necessary evidence to show the percentage of disability suffered in the accident which had resulted his earning capacity. The Workmen Commissioner is directed to dispose of the claim petitions within a period of twelve (12) weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Deputy Commissioner of Labour Court,
(Commissioner of Labour),
Dindigul.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2 CC to M/s.P.MALINI, Advocate (SR-10943[F], SR-10927[F] dated 09/03/2022)

+1 CC to M/s.P.R.PRITHIVIRAJ, Advocate (SR-11661[F] dated 11/03/2022)

JUDGMENT MADE IN
C.M.A (MD) Nos.1104 of 2021
and 1105 of 2021
09.03.2022

RS (29.03.2022) 3P-7C