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C.M.A.No.3226 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3226 of 2006

United India Insurance Co. Ltd.,
No.2, Dr.Sankaran Road,
Namakkal.

... Appellant

Vs.

1.Ganesan
2.Selvi

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award dated 13.02.2006 made in W.C. No.631 of 2004 on the file of Commissioner for Workmen's Compensation at Salem.

For Appellant : Mr.T.Ravichandran

For Respondents : Not Ready in Notice

JUDGEMENT

The Civil Miscellaneous Appeal is filed by the appellant/ insurance company against the award passed in W.C. No.631 of 2004 on the file of Commissioner for Workmen's Compensation at Salem.



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2. It is the alleged that the first respondent was employed as a Driller in the Rig vehicle bearing Regn.No.TN-28-X-3519 under the second respondent. Whiles, on 15.08.2004, he rigged the borewell in Andhra Pradesh, at that time, the wall of the well fell on the first respondent, thereby he sustained injuries and admitted in the hospital, for which, he filed an application claiming compensation before the Commissioner for Workmen's Compensation at Salem under the Workmen Compensation Act. After adjudication, the Commissioner passed an award awarding a sum of Rs.3,46,192/- as compensation. Aggrieved by the said award, the appellant/insurance company has preferred the present appeal.

3. The learned counsel appearing for the appellant/insurance company submitted that, the accident had happened not while driving rig vehicle, which was owned by the second respondent and insured with the appellant. He also submitted that the first respondent is not a driller and not working with the second respondent. Though the second respondent drilling vehicle was insured with the appellant/insurance company,



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however, the employee-employer relationship was not established before the Workmen Compensation Court. However, the Workmen Compensation Court awarded compensation in favour of the first respondent, which is wholly unsustainable. Accordingly, he prays for allowing the appeal.

4. Though appeal was filed in the 2006, however, till date, notice was not served on the respondents. Considering the pendency of this appeal, this Court is inclined to dispose of this appeal based on the materials available on record.

5. The first respondent claims to be employed as a driller in the vehicle owned by the second respondent bearing Regn.No.TN-28-X-3519. On 15.08.2004, during the course of his employment, the wall of the well fell down on the first respondent, thereby he sustained injuries and filed application before the Workmen Compensation Court. Admittedly, the rig vehicle is insured with the appellant/insurance company. It is seen from the records that the second respondent has not filed any written statement denying the employee-employer in between



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the first respondent and the second respondent, though the appellant claims that there is no employer-employee relationship. In the absence of any counter by the second respondent that the first respondent was not employed under him, the employer-employee relationship cannot be disputed on the mere saying of the appellant. Hence, the appellant/insurance company is not entitled to take such stand unless the second respondent filed a counter statement before the Workmen Compensation Court denying the employee-employer relationship.

6. Further, it is not disputed that there is no valid insurance subsisting on the date of the incident. There is an effective valid insurance with the appellant by the second respondent and in such a situation, any accident occurring during the course of employment, the appellant is liable to indemnify the second respondent. The first respondent being an employee of the second respondent, and there being a valid insurance policy, considering the above aspects, the Tribunal has passed an award in favour of the first respondent, which is wholly sustainable and the same cannot be interfered with.



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7. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Commissioner for Workmen's Compensation at Salem in W.C.No.631 of 2004, dated 13.02.2006 is confirmed. The appellant/insurance company is directed to deposit the amount of compensation quantified by the authority to the credit of W.C.No.631 of 2004 within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the authority is directed to disburse the amount directly to the bank account of the first respondent through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

16.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

- 1.The Commissioner for Workmen's Compensation at Salem.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

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