



C.M.A.No.1448 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1448 of 2016

B. Saravanan

... Appellant

Vs.

1. A.Pandurangan

2. The New India Assurance Co., Ltd.,
Motor Third Party Claims Cell,
No.45, Moore Street,
Chennai-600 001

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 30 of the Workmen's Compensation Act, 1923 to set aside the decree and judgement dated 01.08.2008 made in W.C.No.483 of 2006, on the file of the Commissioner for Workmen's Compensation-I, (Deputy Commissioner of Labour-I) at DMS Compound Teynampet, Chennai-600 006.

For Appellant : M/s.V.Venkatesan



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For respondents : R1- Notice served

: M/s.J.Chandran for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed by the Commissioner for Workmen's Compensation-I, in W.C.No.483 of 2006 dated 01.08.2008 wherein the Commissioner has observed liability of the insurance company from indemnifying the first respondent in paying compensation.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The case of the workmen is that he was employed by the first respondent as a Coolie and was receiving Rs.4,000/- per month plus Rs.20/- as Batta. He used to do various work assigned by the first respondent. On 07.06.2006, he was directed to travel along with the vegetable loads from Puzhal to Koyambedu, Chennai while their Goods van bearing Registration No.TN-20-AZ-5558 reached near Perambur Berax Road near stands road



junction at about 3.30 a.m., a Lorry bearing Registration No.TN-32-U-2233 came in the opposite direction and hit on the lorry in which the claimant was travelling which resulted in causing severe injuries to him. Later he was undergone treatment at Government Hospital, Kilpauk. In this regard, the Kilpauk Police have also registered a criminal case against the driver of the lorry bearing Registration No.TN-32-U-2233 in crime No.248/P2/2006 under Sections 279 and 337 of IPC. The first respondent has insured his vehicle with the second respondent/Insurance Company. Hence, both the respondents are liable to pay the compensation.

4. The first respondent has filed counter and admitted that he has engaged a workman herein as a coolie on monthly salary basis and he has also admitted the accident. He has given the policy number stating that there is a coverage for the injured in the vehicle, hence prays to direct the second respondent to pay the compensation.

5. The second respondent has filed their counter and contended that there is no employer-employee relationship between the workmen and the first respondent. The workmen shall prove that he travelled in the van



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bearing Registration No.TN-20-AZ-5558 as a coolie and the other aspects are concerned the claimant has to prove his case including the coverage of the policy.

6. Before the Tribunal, the claimant has examined himself as P.W.1 and marked Exs.P1 to P6. On the side of the respondents neither witnesses nor exhibits were marked.

7. The Labour Commissioner after analysing the evidence placed on record held that there is a employer-employee relationship and the workmen has also travelled in the lorry belonged to the first respondent. However, the Tribunal has refused to direct the second respondent from indemnifying the first respondent on the ground that the claimant has travelled in the goods vehicle. Hence, he is not entitle for compensation.

8. On perusal of the award which shows that the claimant examined himself as P.W.1 and has stated that he is a coolie working under the first respondent. This was also accepted by the first respondent and there is specific finding given by the Commissioner that there is employer-employee



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relationship and while travelling as a coolie in the goods vehicle the accident had occurred. Having held that the claimant is a coolie travelling in the vehicle as per the instructions of the first respondent transporting the vegetables, the Commissioner has erred in refusing to award compensation by way of directing the second respondent Insurance Company on the ground that the claimant is a unauthorized passenger which is not sustainable. It is the admitted case of the Insurance Company that the workmen travelled in the goods vehicle which is insured with the second respondent are covered for the personal injuries sustained by him.

9. It is also stated by the counsel for the workmen that totally two persons were injured in the accident and another claimant namely A.Subramanian has filed a separate claim petition who has also suffered the similar order from the Labour Commissioner has challenged the said finding, approached this Court by way of C.M.A.No.1447 of 2016 and this Court by judgment dated 25.01.2021 directed the Insurance Company to indemnify the first respondent on the ground that there is a coverage to the workmen in the policy. Hence, the absorbing the Insurance Company from indemnifying the first respondent is not proper. The copy of the judgment of



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this Court has also produced before this Court. In the present case also there is a coverage for the workmen i.e., the injured herein and once the employer-employee relationship is established and the coverage has to be acted upon. Accordingly, the Insurance Company is liable to pay the compensation and absorbing the Insurance Company from paying the compensation is not proper.

10. Accordingly, the appeal is allowed. The second respondent directed to deposit the compensation amount awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the climant is entilted to withdraw the same by making appropriate application. No costs.

09.08.2023

jai

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

- 1.The Commissioner for Workmen's Compensation-I,
(Deputy Commissioner of Labour-I)
at DMS Compound Teynampet, Chennai-600 006.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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