



CMA.No.1019 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.1019 of 2020

and

CMP.Nos.6402 of 2020 &13232 of 2023

The Professional Couriers,
No.32, Whites Road,
Royapettah, Chennai – 600 166.
Rep. By its General Manager.

...Appellant

Vs.

1. Thamizh
2. The Professional Couriers,
No.455/5, M.T.h Road,
Ambattur, Chennai – 600 053.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in W.C.No.109 of 2009 dated 05.12.2019 on the file of the Joint Commissioner of Labour-II (Commissioner for Workmen Compensation), Chennai.

For Appellant : Mr.A.Venkatesh Kumar
for M/s. Gupta and Ravi

For Respondents : Mr.A.G.F.Terry Chellaraja, for R1
: No Appearance, for R2



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed challenging the order passed in W.C.No.109 of 2009 dated 05.12.2019 on the file of the Joint Commissioner of Labour-II (Commissioner for Workmen Compensation), Chennai.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming compensation of Rs.3,00,000/- on the ground that, on 11.10.2008 at about 2.00 pm when he was in duty, during the course of his employment with the 2nd respondent, he slipped in the bathroom and he sustained grievous leg injury and got admitted in the hospital. Therefore, the claimant filed a claim petition claiming compensation for the injuries sustained by him. Before the workman's compensation court, the appellant examined one witness viz., R.W.1 and marked 3 documents viz., Ex.R1 to 3 and the 1st respondent examined 2 witnesses viz., P.W.1 and P.W.2 and marked 9 documents viz., Ex.P1 to 9. After contest, the commissioner, vide impugned order awarded a compensation of Rs.1,59,386/-. Aggrieved by the said order, the appellant had preferred this appeal.



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WEB CODE

3. Learned counsel for the appellant submitted that appellant is not liable to compensate the 1st respondent, since as per the Ex.R2 Memorandum of understanding/franchise agreement entered into by the appellant with the 2nd respondent, the appellant allowed to use its name in order to develop the business and as per the clauses in the agreement, it is not liable to take risk of the person employed by the 2nd respondent. Therefore, the appellant need not pay any compensation and it is the 2nd respondent who has to pay compensation to the 1st respondent. However, the commissioner failed to appreciate the said clause and fastened the liability as against the appellant which is not sustainable.

4. Learned counsel for the 1st respondent submitted that, the 1st respondent was employed as a courier boy with the appellant and the 2nd respondent and the MoU whatsoever entered into between the appellant and the 2nd respondent cannot in any way deprive the rights of the 1st respondent from claiming compensation for the injuries sustained by him during the course of the employment. Further the Exs.P.4 to 7 would reveal the employment of the workman with the appellant. Further, even a bare



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perusal of the MoU Ex.R2 makes it clear that no second party name is mentioned and simply mentioned as Professional couriers and the salary slip also makes it clear that the 1st respondent was paid with salary by the appellant in which the appellant name is mentioned as 1st party and the address was mentioned as Royapettah, Chennai and the name of the claimant is in SL.No.4. Hence the appellant cannot shift the responsibility to the 2nd respondent and the appellant and the 2nd respondent are one and the same and only in order to deprive the rights of the 1st respondent/claimant, such a plea is taken.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. A perusal of the documents, Exs.P4 to P-7 filed by the workman reveal that the workman was employed with the appellant. Though the appellant claims that it was a mere franchise and therefore is not entitled to pay the compensation, however, the MoU alleged to have been entered into



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between the appellant and the 2nd respondent herein, Ex.R-1 would not in any way preclude the right of the workman to claim any compensation.

7. The Commissioner has analysed the deposition of R.W.1, wherein in clear terms R.W.1 has deposed that no document has been filed to established the ownership of the appellant. Except for the MoU, which is alleged to have been signed between the appellant and the 2nd respondent herein, there is no material to show that the workman was not employed under the appellant, but is under the employ of the 2nd respondent herein. Appreciating all the aforesaid aspects, the Commissioner has rightly fastened the liability on the appellant to pay the compensation, which does not require any interference.

8. In the result, the appeal is dismissed confirming the order impugned herein. However, liberty is granted to the appellant to workout its remedy in the manner known to law as against the 2nd respondent on the basis of the MoU. It is submitted that the compensation amount has already been deposited. The 1st respondent is entitled to withdraw the entire



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compensation amount with accrued interest by filing appropriate petition.

In view of the above order passed in this appeal, this Court is of the view that, impleading of Mr.Usman Miran, the Proprietor of Avadi enterprises as 3rd respondent in this appeal is not necessary and thereby, the impleading petition in CMP.No.13232 of 2023 is closed and the connected Miscellaneous petition is also closed. No costs.

28.11.2023

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Copy to:

1. The Joint Commissioner of Labour-II
(Commissioner for Workmen Compensation),
Chennai.
2. The Section Officer,
VR Section, Madras High Court.



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M.DHANDAPANI., J.

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