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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1307 of 2020 and
C.M.A.No.99 of 2021

S.Shariff

... Appellant in C.M.A.No.1307 of 2020/
1st Respondent in C.M.A.No.99 of 2021

Vs.

1. Parveen Nisha

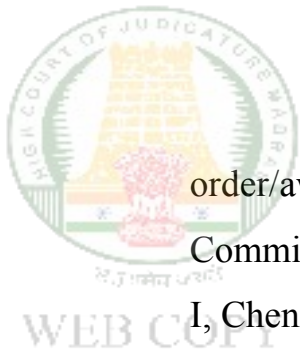
... 1st Respondent in C.M.A.No.1307 of 2020/
2nd Respondent in C.M.A.No.99 of 2021

2. M/s.Magma HDI General Insurance Co., Ltd.,
Navins Presidium, 3rd Floor
New No.17/19, Old NO.103,
B-Block, Nelson Manickam Road,
Aminjikarai,
Chennai - 600 029

... 2nd Respondent in C.M.A.No.1307 of 2020/
Appellant in C.M.A.No.99 of 2021

Prayer in C.M.A.No.1307 of 2020: This Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, 1923, to enhance the award dated 28.02.2020 made in E.C.No.39/2019 on the file of the Deputy Commissioner of Labour-I, Chennai.

Prayer in C.M.A.No..99 of 2021: This Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, 1923, to set aside the



order/award dated 28.02.2020 made in E.C.No.39/2019 on the file of the Commissioner of Employee's Compensation, Joint Commissioner of Labour-I, Chennai and be pleased to dismiss the claim.

For Appellant in C.M.A.No.1307 of 2020/
1st Respondent in C.M.A.No.99 of 2021 : Mr.R.Mohan Babu

For 2nd Respondent in C.M.A.No.1307 of 2020/
Appellant in C.M.A.No.99 of 2021 : Mr.Somasundaar

J U D G M E N T

This Civil Miscellaneous Appeal in C.M.A.No.1307 of 2020 is filed by the claimant to enhance the award dated 28.02.2020 made in E.C.No.39 of 2019 on the file of the Commissioner of Employee's Compensation-I and Joint Commissioner of Labour-I, Chennai.

2. The Civil Miscellaneous Appeal in C.M.A.No..99 of 2021 is filed by the Insurance Company to set aside the award dated 28.02.2020 made in E.C.No.39 of 2019 on the file of the Commissioner of Employee's Compensation-I and Joint Commissioner of Labour-I, Chennai, and to dismiss the claim.



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3. The claimant had filed a claim petition before the Commissioner of Employee's Compensation-I and Joint Commissioner of Labour-I, Chennai, claiming compensation of Rs.20,00,000/- for the injuries sustained due to the accident that occurred during employment stating that the claimant was working as auto driver under the 1st respondent and was getting Rs.15,000/- per month towards salary and Rs.100/- towards daily allowance. While so, on 04.03.2019 at 9.30, he was proceeding in the passengers auto bearing Regn. No.TN-03-Y-7362 to Meenjur from Manali. At that time, a street dog crossed the road and when the claimant tried to avoid hitting against the dog, he lost the control and met with an accident. Due to which, the claimant sustained grievous injuries all over the body. Immediately, he was taken to Government Hospital, Chennai, where he took treatment as in-patient. A case was also registered in Crime No.127 of 2019 on the file of the Meenjur Police Station. Due to the accident, he sustained fracture in the left leg below the knee and he also underwent a surgery and took treatment as inpatient from 04.03.2019 to 24.04.2019. The said Auto was insured with the 2nd respondent/Insurance Company. The Policy No.P0019300003/ 4103/112710 and the policy period is 24.11.2018 to



23.11.2019. At the time of accident, the claimant was aged 29 years and he was the only bread winner of his family. The accident had occurred during employment and since the claimant sustained permanent disability, he could not do the driver job as before and since the vehicle of the 1st respondent was insured with the 2nd respondent/Insurance Company, the 2nd respondent/Insurance Company is liable to pay the compensation.

4. Before the Tribunal, both the owner and the insurer of the vehicle were set ex-parte.

5. In order to substantiate the claim, on the side of the claimant, 14 documents were marked as Ex.P.1 to Ex.P.14.

6. The Commissioner, after enquiry, awarded compensation of Rs.10,07,606/- and directed the 2nd respondent/Insurance Company to deposit the said amount with interest at 12% from the date of accident i.e. from 04.03.2019 till the date of deposit along with medical expenses of Rs.6,503/- and the total compensation awarded by the authority is Rs.10,14,119/-, before the "Joint Commissioner of Labour-I, Chennai-6",



within 30 days from the date of receipt of the order.

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7. Aggrieved by the Award of the Commissioner, the claimant has filed the appeal in C.M.A.No.1307 of 2020 for enhancement and the Insurance Company has filed the appeal in C.M.A.No.99 of 2021 challenging the ex-parte order passed by the Commissioner of Employee's Compensation and to set aside the same.

8. The learned counsel for the Insurance Company submitted that that there is no employer and employee relationship between the 1st and 2nd respondents who are alleged to be the injured and owner of the vehicle. The 1st and 2nd respondents are husband and wife and there is no employer and employee relationship between them and that they have also not proved that the 2nd respondent is the owner of the vehicle and the 1st respondent was working as an employee under the 2nd respondent. Further, the wages of the 1st respondent was also not proved. However, the Commissioner of Employee's Compensation, fixed Rs.8,000/- notionally, which is also against the propositions of law. The Commissioner of Employee's Compensation, failed to appreciate the materials and based on the ex-parte evidence, awarded



a sum of Rs.10,07,606/-, as compensation. He also placed the decision in the case of Singhal and Company Vs. Hussain Ali and another, reported in 1995 (1) LLN 21 : 1995 (1) LLJ 78 (Allahabad high Court) and stated that in the said case, the Court held that there was no relationship of employer and employee and there was only father and son relationship between the parties and the very same decision would squarely applicable to the present case also. In this case the 1st respondent is husband and the 2nd respondent is wife and therefore, there is no employer and employee relationship between them. However, the Commissioner of Employee's Compensation, failed to consider the same and erroneously held that there is employer and employee relationship and therefore, the 1st respondent is entitled to get compensation under the Employees Compensation Act, which warrants interference. He further submitted that since it was an ex-parte order, the Insurance Company had filed an application before the Commissioner of Employee's Compensation, to set aside the ex- parte order and the same is also pending. Meanwhile, the claimants have filed the appeal before this Court for enhancement of compensation and therefore, this Insurance Company has filed C.M.A.No.99 of 2021. He would reiterate that without any materials, just because the Insurance Company remained ex-parte, the Commissioner of



Employee's Compensation, has passed the order. Therefore, the same is liable to be set aside and the appeal has to be allowed.

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9. The learned counsel for the claimant would submit that no document has been placed either before the Commissioner of Employee's Compensation or before this Court by the Insurance Company, to prove that there is no relationship of employer and employee between the claimant and the owner of the vehicle and they are only spouses and that the Employee's Compensation Act would be applicable only to the employee who is working under the employer. When the claim petition was filed before the Commissioner of Employee's Compensation, both the owner of the vehicle/employer of the claimant, remained ex-parte and the Insurance Company in which the said vehicle was insured, also did not appear and file any counter denying the relationship of employer and employee between the claimant and the owner of the vehicle and disproved the same. He further submitted that though the Commissioner of Employee's Compensation, rightly held that there is employer and employee relationship between the claimant and the owner of the vehicle, he failed to consider the minimum wage prevailing on the date of accident and fixed only notional income



which is the against proposition of law. They ought to have fixed the minimum wage as per G.O.(2D) No.15 Labour and Employment (J1) Department which is meant for fixing minimum rate of wages payable to the classes of Employees in the Employment of Auto-Rikshaws and Taxis in the State of Tamil Nadu. As per the said Government Order, the claimant is entitled to get compensation proportionate to the minimum wage. Hence, the appeal is filed by the claimant for enhancement and the same may be allowed and the appeal by the Insurance Company is liable to be dismissed.

10. Heard the learned counsel for the Claimant and the learned counsel for the Insurance Company.

11. Admittedly the claimant was working as a driver and while he was on employment, there was an accident on 04.03.2019 due to which, he sustained grievous injuries and also sustained fracture in the left leg below the knee and underwent a surgery. Since he suffered permanent disability, he could not do the driver job as before the accident. Since the accident had happened during the course of employment, he filed a claim petition before the Commissioner of Employee's Compensation under the Employees



Compensation Act and though notice was duly served to the Insurance Company/the insurer of the employer, they did not appear and the Commissioner of Employee's Compensation, found from the available materials that the accident was only during the course of employment and due to the accident, the claimant sustained injuries as per the schedule and that the injuries fall under the schedule of the Act. Therefore, the Commissioner of Employee's Compensation, awarded compensation of Rs.10,14,119/-. Challenging the said award, the claimant has filed the appeal in C.M.A.No.1307 of 2020 for enhancement and the Insurance Company has filed the appeal in C.M.A.No.99 of 2021 against the liability stating that there is no employer and employee relationship between claimant and the owner of the said vehicle.

12. A perusal of the records shows that even in the claim petition, the claimant has stated that he was working as an employee i.e. as driver under the 1st respondent in C.M.A.No.1307 of 2020/2nd respondent in C.M.A.No.99 of 2021 and the same was not denied by the Insurance Company either by filing counter or by adducing evidence. Further, admittedly the said vehicle stands in the name of the 1st respondent in



C.M.A.No.1307 of 2020/2nd respondent in C.M.A.No.99 of 2021 and the claimant was working as a driver. Though the learned counsel for the Insurance Company stated that there is a relationship of husband and wife between the claimant and the owner of the vehicle, there is no material to prove the same. Even if the owner of the vehicle is the wife of the claimant, there is no legal bar that the husband should not be an employee under his wife.

13. The Commissioner of Employee's Compensation, with the available records, on finding that the claimant was working as a driver under the 1st respondent in C.M.A.No.1307 of 2020/2nd respondent in C.M.A.No.99 of 2021 and the accident had happened only during the course of employment and therefore, the Employee's Compensation Act would attract and claimant was entitled for the compensation. There is no contra evidence and materials.

14. Admittedly, the said vehicle was insured with the appellant in C.M.A.No.99 of 2021/Insurance Company and at the time of accident, the insurance is covered. Once the insurance policy covers the employment, at the time of accident, the claimant was employee and he sustained injury due to the accident and the accident was only during the course of employment.



15. Therefore, this Court does not find any perversity in the appreciation of evidence and the findings of the Commissioner of Employee's Compensation. The contrary that there is no employer and employee relationship and there is only a relationship of husband and wife between claimant and the owner of the vehicle, is not proved by the Insurance Company. There is no merit in the appeal in the appeal filed by the Insurance Company. In this case, there is no contra evidence to show that apart from the husband and wife relationship, there is no employer and employee relationship between the 1st and 2nd respondents.

16. As far as fixation of liability is concerned, since the appellant in C.M.A. No.99 of 2021 is the insurer of 2nd respondent's vehicle, it is liable to pay the compensation to the claimant.

17. As far as quantum of compensation is concerned, though the Commissioner of Employee's Compensation has fixed the income of the claimant notionally, it is below the minimum wages prescribed by the State Government in G.O.(2D) No.15 Labour and Employment (J1) Department. Though the Commissioner of Employee's Compensation is satisfied with the



relationship of employer and employee between the claimant and the owner of the vehicle; the injuries sustained by the claimant due to the accident which occurred during the course of employment and the insurance coverage and awarded compensation by fixing notional income, he has not given any reason as to why he has not fixed the minimum wages as per the guidelines given by the State Government in the said Government Order.

18. Under these circumstances, the notional income fixed by the Commissioner of Employee's Compensation, is set aside. The income of the claimant/employee is fixed as minimum wage as per the said Government Order.

19. The citation referred to by the learned counsel for the Insurance Company is not applicable to the present case on hand. The facts and circumstances of that case are distinct. In that case, the relationship of father and son was established and since no employer and employee relationship was established, the Court considered the same and dismissed the application, whereas, in this case, the employer had not approached the Court and the Insurance Company also not filed any counter and established that there was



no employer and employee relationship between the claimant and the owner of the vehicle which was insured with the appellant in C.M.A.No.99 of 2021/Insurance Company. But the claimant has clearly stated that he was working as an employee under the owner of the vehicle. Therefore, the citation is not applicable to the present case on hand.

20. Accordingly, the award passed by the Commissioner of Employee's Compensation, is re-worked as follows;

S.No.		Award Passed by the Commissioner of Employee's Compensation	Amount awarded by this Court
1	Age of the claimant	29	29
2	Age factor	209.92	209.92
3	Notional Income	Rs.8,000/-	Rs.9,274/-
4	Loss of earning capacity	100%	100%
	Compensation	Rs.10,07,616/- (60/100x209.92x Rs.8000/-x100/100)	Rs.11,68,079/- (60/100x209.92xRs.9,274/ -x100/100)
	ADD: Medical bills	Rs.6503/-	Rs.6503/-
	Total Compensation	10,14,119/-	Rs.11,74,582/-

21. Accordingly, the award of the Commissioner of Employee's Compensation is modified by enhancing the compensation amount from 10,14,119/- to Rs.11,74,582/-



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22. The Insurance Company is directed to deposit the modified award amount before this Court, with interest at 12% from the date of accident i.e. from 04.03.2019 till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

23. In the result, the appeal filed by the insurance company in C.M.A.No.99 of 2021 is **dismissed**. The appeal filed by the claimant in C.M.A.No.1307 of 2020 is **allowed**. The claimant is at liberty to withdraw the amount deposited before this Court by the Insurance Company. No costs.

05.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1.The Commissioner of Employee's Compensation-I and
Joint Commissioner of Labour-I, Chennai,

2.The Section Officer,
VR Section,
High Court,
Madras.



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C.M.A.No.1307 of 2020 and C.M.A.No.99 of 2021



P.VELMURUGAN, J

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