



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1735 of 2021
and CMP. No.9137 of 2021

THE NEW INDIA ASSURANCE COMPANY LTD.
MICRO OFFICE, NO.421, RASIPURAM MAIN ROAD,
VENNANDUR-637505.

Vs

1. VARUDHARAJ

2. PERIYASAMY

...Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order dated 25.01.2021 in EC. Case.No.64 of 2019 on the file of the Commissioner for Employee's Compensation, Coonoor.

For Appellant : Mr.S.Dhakshinamoorthy
For Respondents : No appearance

J U D G M E N T

This appellant/Insurance company has come forward with the present appeal to set aside the order dated 25.01.2021 in EC. Case.No.64 of 2019 on the file of the Commissioner for Employee's Compensation, Coonoor.



2. Brief facts which are necessary for disposal of this appeal are as

follows:

The first respondent was working with the second respondents lorry as cleaner bearing Registration No. TN 28 AV 7120 as cleaner and loadman. On 12.04.2017 at about 12.00 P.M. When the first respondent was on duty, the car driven by the driver of the Ford Fiesta car bearing Registration No. PY 01 AS 9898 came in a rash and negligent manner and dashed at the backside of the lorry. Due to which, the accident had happened and the first respondent sustained injuries. Thereafter, the first respondent has filed a claim petition claiming compensation of Rs.1,00,000/- before the Workmen's Compensation Court, Coonoor and the same was taken on file as E.C. Case No. 64 of 2019.

3. Before the Tribunal, during trial, in order to prove the case, the claimant has examined two witnesses viz., PW1 and PW2 and marked Exs. P1 to P11. On the side of the respondents, one witness was examined and two documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded a sum of Rs.3,21,781/- as compensation to the claimant along with interest, aggrieved



by the said award dated 25.01.2021, the appellant/insurance company has filed the present appeal before this Court.

4. The learned counsel for the appellant submitted that the learned Commissioner failed to consider that neither the employee/claimant nor the employer had produced any documentary evidence to prove that the first respondent herein was employed with the second respondent on the alleged date of accident. The appellant herein cannot be fastened with liability unless the contract employment is proved by the claimant and the owner of the vehicle. The learned counsel further submitted that the Commissioner has failed to consider the FIR which clearly shows that 4 persons travelled in the TATA Ace and nowhere it is stated that the occupants of the vehicle are employed by the owner of the TATA Ace. It is submitted that the occupants are gratuitous passengers in the goods vehicle who has for the purpose of claiming compensation against the insurer, has come up with the false plea alleging to be the cleaner employed in the Goods Vehicle. Without considering these facts, the learned Commissioner has awarded the huge compensation to the claimant without any basis, which is liable to be quashed.



5. Heard the learned counsel for the appellant and perused the materials available on record. Though the name of the respondent has printed in the cause, no one has appeared on his behalf.

6. Admittedly the first respondent was employed as a Cleaner in the second respondent's Tata Ace vehicle, which was insured with the appellant insurance company. The said vehicle was hit by another car and due to which, the accident had happened and the first respondent sustained injuries. The first respondent filed a claim petition before the Employee's Compensation Court against the employer and the insurance company. It is seen from the evidence of the Doctor that he assessed 30% disability for the first respondent and the first respondent has taken treatment from 13.04.2017 to 16.04.2017 as in-patient. The disability has calculated as per the guidelines issued by the Ministry of Social Justice and Empowerment. The appellant has not disputed the statement given by the Doctor before the Employees Compensation Court. Now the issue arises before this Court is that as per the policy condition, only two persons are entitled to travel in the Tata Ace vehicle. However, in the present case there are four persons travelled in the said vehicle.



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7. On perusal of the records, it is seen that there are four persons travelled in the vehicle. However, only one person sustained injuries and he has alone filed a claim petition before the Employee's Compensation Court and awarded compensation, which cannot be interfered with and the learned Commissioner, Employee's Compensation Court has rightly adjudicated the issue and passed award, which is just and reasonable.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the learned Commissioner is hereby confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. on such deposit, the claimant is permitted to withdraw the award amount with interest, by filing necessary applications before the Tribunal. No costs.

22.12.2023

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M.DHANDAPANI,J.

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Index : Yes
Speaking Order : Yes

To

The Judge,

The Commissioner for Employee's Compensation, Coonoor.

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