



WEB COPY



C.M.A.No.1150 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1150 of 2014

and

M.P.No.1 of 2014 & C.M.P.No.20788 of 2023

M/s.United India Insurance Company Ltd.,
No.18, III Floor,
I.M.L. Building,
No.640, (Old No.488/489),
Anna Salai,
Chennai – 600 035.
Party

... Appellant/II Opp.

Vs.

1.B.Sagadevan

... I Respondent/Applicant

2.M/s.Innovative Concepts India Private Limited,
No.47, 8th Main, IV Block,
Jayanagar,
Bangalore – 560 011.

... II Respondent/I Opp. Party

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the Award dated 23rd December, 2013 (received on 11.01.2014) passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour – II, at



C.M.A.No.1150 of 2014

Chennai) in W.C.No.157 of 2011.

WEB COPY

For Appellant : Mr.Michael Visuvasam

For Respondents : Mr.C.Richard Suresh Kumar

[R1]

No appearance [R2]

JUDGEMENT

The appellant has come forward with this appeal, challenging the award passed dated 23.12.2013 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour – II, at Chennai) in W.C.No.157 of 2011.

2. The first respondent claimed that he was working as an Electrician under the second respondent at the ICE Exhibition 2008 held at Island Ground and he claimed that he received a sum of Rs.225/- per day from the second respondent. It is further claimed by the first respondent that on 14.08.2008, the second respondent instructed its Supervisor to assist the workers who were involved in the opening of VVIP entrance iron gate. During the process of opening of iron gate, due



C.M.A.No.1150 of 2014

WEB COPY

to non-compliance of the safety measure by the second respondent's officials and negligence on the part of other co-workers, the iron gate fell down on the first respondent, as a result of which, he sustained fracture injuries and admitted in the Government General Hospital, Chennai and took treatment as inpatient from 14.08.2008 to 15.08.2008 and after continued the treatment in the Tamil Nadu Government Dental College Hospital. Thereafter, he filed a petition before the Deputy Commissioner of Labour – II, Chennai under the Workmen Compensation Act. After adjudication, the Deputy Commissioner of Labour passed an order awarding a sum of Rs.2,79,367/- in favour of the first respondent. Assailing the same, the present appeal has been filed by the appellant on the grounds of liability as well as quantum of compensation.

3. The learned counsel appearing for the appellant submitted that, after Bhopal gas tragedy, the Central Government directed all the public event holder to take the Public Liability Insurance Policy from the respective insurance company in order to provide lumpsum compensation to the general public, who were assembled for the public event. In view of the same, the second respondent has taken Public Liability Insurance



C.M.A.No.1150 of 2014

WEB COPY

Policy from the appellant/Insurance Company under the Public Liability Insurance Act, 1991 (in short 'the Act'). He further submitted that, as per clause 8.14 of the Public Liability Non-Industrial Risk Policy, injury to any person under the contract of employment or apprenticeship with the insured when such injury arises out of the execution of such contract, they are not entitled to claim compensation as against the appellant/Insurance Company. However, without considering the said clause, the Deputy Commissioner of Labour – II had mechanically passed an award in favour of the first respondent, which is not sustainable. Further, as per clause 4.1 of the policy, the officials alone are entitled to claim compensation from the insurance company under the Act and the contract worker or apprenticeship are not entitled to claim compensation as against the insurance company. However, the Deputy Commissioner of Labour – II, without appreciating the said facts, had mechanically fastened the liability as against the appellant/Insurance Company, which is not sustainable.

4. It is further submitted by the learned counsel appearing for the appellant that, the first respondent sustained fracture injury on his jaw



C.M.A.No.1150 of 2014

and his tooth were damaged, for which, a qualified doctor has to examine the first respondent. However, Dr.Thiagarajan, General Practitioner has examined the first respondent and issued a disability certificate assessing disability at 80%, based on which, the award was passed, which is not sustainable. When a qualified doctor has not issued the certificate, this Court has to consider the same in a proper manner and pass appropriate orders. Accordingly, he prays for allowing the appeal.

5. The learned counsel appearing on behalf of the first respondent submitted that, the second respondent's officials engaged the first respondent temporarily as an electrician. In that process, an iron gate fell down on the first respondent, thereby, he sustained injuries. The said facts were elaborately considered by the Deputy Commissioner of Labour – II and award was passed, which cannot be interfered with. Further, a qualified doctor issued the disability certificate in favour of the first respondent, after assessing him completely and based on which, the award was passed, thereby, the same cannot be interfered with. Accordingly, he prays for dismissal of this appeal.



C.M.A.No.1150 of 2014

WEB COPY

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. Admittedly, the second respondent possessed Public Liability Non-Industrial Risk Policy from the appellant/Insurance Company in terms of the Act. The short issue arises in the present case is whether the employees engaged by the officials of the second respondent are entitled to claim compensation from the appellant/Insurance Company or not ?

8. A perusal of clause 8.14 of the Public Liability Non-Industrial Risk Policy relied upon by the learned counsel appearing for the appellant/Insurance Company makes it clear that, injury to any person under a contract of employment or apprenticeship with the injured when such injury arises out of the said execution of such contract, they are excluded from the purview of the policy. For better appreciation, the relevant clauses of the policy are as follows :-



C.M.A.No.1150 of 2014

WEB COPY

4. INDEMNITY TO OTHERS :

The indemnity granted extends to :

4.1. Officials of the Insured in their business capacity arising out of the performance of their business or in their private capacity arising out of their temporary engagement of the Insured's employees;

8. EXCLUSIONS/EXCEPTIONS :

8.14. Injury to any person under a contract of employment or apprenticeship with the insured when such injury arises out of the execution of such contract.

9. In the present case, the officials of the second respondent engaged the first respondent as an electrician. In that process, the iron gate fell down on the first respondent, thereby, he sustained injury. Further, a perusal of clause 4.1 makes it clear that, the officials of the insured in their business capacity arising out of the performance in their private capacity arising out of their temporary engagement of the insured's employees, they were granted indemnity. In view of the above said clause, the officials engaged persons like that of the first respondent are entitled to claim compensation from the Insurance Company. Hence, the order of the Deputy Commissioner of Labour – II cannot be interfered



C.M.A.No.1150 of 2014

with on the question of liability.

WEB COPY

10. Further, the first respondent sustained injury in his head and jaw including the damage to his tooth, for which, the qualified doctor to assess the disability of the first respondent is neuro-cum-facial surgeon and the dentist. However, Dr.Thiagarajan, who is not a specialist in that field and he is only a general practitioner, had assessed the disability of the first respondent at 80% and the Deputy Commissioner of Labour – II has assessed the disability at 70%. This Court is of the view that the disability assessed at 70% is highly excessive. Hence, this Court is inclined to fix disability suffered by the first respondent at 50%. Therefore, the compensation is worked out as $60/100 \times 166.29 \times 4000 \times 50/100 = \text{Rs.1,99,548/-}$.

11. It is submitted by the learned counsel appearing for the appellant/Insurance Company that they have already deposited the compensation amount of Rs.2,79,367/- before the Deputy Commissioner of Labour – II, Chennai. Therefore, the first respondent is permitted to withdraw Rs.1,99,548/- as awarded by this Court with accrued interest and the appellant/Insurance Company is permitted to withdraw the



C.M.A.No.1150 of 2014

WEB COPY

balance amount.

12. With the above directions, the civil miscellaneous appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition in M.P.No.1 of 2014 is closed. Since paper publication in respect of second respondent has already been ordered by this Court, no further order is necessary in C.M.P.No.20788 of 2023, accordingly, the same is also closed.

13.10.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

sp

To

1.The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour – II, at Chennai).

2.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



C.M.A.No.1150 of 2014

M.DHANDAPANI, J.,

sp

C.M.A.No.1150 of 2014

13.10.2023