



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1610 of 2020

and

C.M.P.No.11839 of 2020

United India Insurance Company Limited,
Silingi Building, IV Floor,
No.134, Greams Road,
Chennai-600 006.

... Appellant

Vs.

1.Riswan

2.A.Afsar

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the final award dated 09.01.2020 received on 08.02.2020 passed in E.C.No.3 of 2016 by the Commissioner for Employees Compensation (Joint Commissioner of Labour-II) at Chennai.

For Appellant : M/s.J.Michael Visuvasam

For First Respondent : Mr.A.G.F.Terry Chella Raja



WEB COPY

JUDGMENT

The appeal is filed by the insurance company challenging the final award dated 09.01.2020 passed in E.C.No.3 of 2016 by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour-II, Chennai).

2. On 28.10.2020, when the matter was taken up for hearing, this Court had directed the Commissioner, Joint Labour-II, Chennai not to disburse the award amount until further orders. As far as main appeal is concerned, notice was ordered to the respondent.

3. When the matter was taken up today, it is submitted by the learned counsel that the appeal may be heard on merits and therefore, the appeal is taken up for final disposal. The appellant has raised the following, Substantial Questions of Law in the grounds of appeal.

Substantial Question of Law:

“1. When the oral evidence of the first respondent was contrary to the documentary evidence, viz. Ex.P-1 F.I.R., marked and relied on by him, whether the finding of the



learned Joint Commissioner that the first respondent was employed under the second respondent and that the accident had occurred in the course of employment can be sustained?

2. When the disablement assessment is not co-extensive with that of the loss of the earning capacity, whether the learned Joint Commissioner was justified in mechanically converting the physical disablement assessed at 15%, as the loss of earning capacity of the first respondent?

3. Whether the learned Joint Commissioner of Labour, was justified in directing the Appellant to pay interest at 12% per annum, from the date of accident till date of deposit, when no 'notice of claim' was sent by the first respondent to the appellant and the appellant was not even aware of the alleged road traffic accident and employment injuries sustained by the first respondent?"

4. The brief facts leading to the above appeal are that on 08.08.2015 when the appellant was driving TATA Indica Car of the first



WEB COPY

respondent, he noticed that smoke was emanating from the radiator and so he got down from the car to pour water. As he was about to start the car, at that time, a bus came from behind and hit the car, due to which the car moved and dashed against the road side tree. Due to the impact of the collision, the applicant sustained fractures Nasal bone with adjacent emphysema ethmoival, hemosinus and septal haematoma and other grievous injuries all over the body.

5. According to the applicant, he was working as a driver under the first opposite party and due to aforesaid injuries sustained by him in the accident, he was not able to continue his work as a driver. The applicant therefore, filed the claim petition for compensation for loss of earning capacity arising out of the grievous injuries sustained by him in the accident.

6. The first opposite party remained exparte before the Commissioner for Employees Compensation (Joint Commissioner of Labour-II) at Chennai and therefore, the appeal was contested by the second respondent Insurance Company.



7. The second respondent denied the employer and employee relationship between the applicant and the first opposite party. The second respondent further submitted that the injuries sustained by the applicant were simple and superficial and therefore, there was no permanent disability as alleged by the applicant. It was further submitted that the compensation claimed by the applicant was huge and second respondent was not liable to pay compensation to the applicant. On these and other grounds, the second respondent disputed his liability to pay compensation.

7. Before the Joint Commissioner Labour-II, Chennai, the applicant examined himself as P.W.1 and further examined Doctor K.J.Manthiazhagan as P.W.2 and marked Exs.P.1 to P.13 in support of his case. The respondent on the other hand examined two witnesses and marked Exs.R1 to R6 in support of its case. The Joint Commissioner of Labour-II, Chennai, on assessment of entire evidence on record, returned a finding that applicant had suffered injuries in the course of his employment. On the quantum of compensation, the Joint Commissioner of Labour-II, Chennai, considering the nature of injuries sustained by the applicant and also Ex.P.12, the disability certificate and the evidence of



P.W.2 awarded compensation of Rs.1,49,746/- along with 12% interest.

Aggrieved by the award passed by the Joint Commissioner Labour, the Insurance Company has filed the above appeal. The learned counsel for the Insurance Company submitted that the lower Court failed to note that the applicant was not employed under the first opposite party and that the accident had not occurred in the course of employment.

8. The learned counsel further submitted that the lower Court ought to have seen that disability had no impact on his earning capacity and so the Joint Commissioner Labour, was not justified in the mechanically converting physical disability into loss of earning capacity. On these grounds, the learned counsel prayed to set aside the award passed by the Joint Commissioner of Labour-II, Chennai.

9. The learned counsel for the respondent on the other hand submitted that the finding of the Joint Commissioner of Labour -II, Chennai was based on the evidence on record and therefore the same need not be interfered with by this Court. The learned counsel further submitted that appellant Insurance Company did not dispute the employment of the applicant with the first opposite party. On the said



submissions, the learned counsel for the respondent prayed the appeal be dismissed.

10. I have heard both the counsels and I have perused the entire records.

11. The points that arise for consideration in the appeal as formulated in the Substantial Questions of Law are (1) whether the first respondent was employed under the second respondent and whether the accident occurred in the course of employment. (2) Whether the Joint Commissioner of Labour -II, Chennai was justified in mechanically converting disability at 15% into loss of earning capacity. On the first substantial questions of law, the Joint Commissioner of Labour-II, Chennai, on the assessment of the facts categorically held that the first respondent was temporarily hired by the second respondent and therefore, there was employer and employee relationship between the first and second respondents. It is seen that the said finding of the Joint Commissioner of Labour-II, Chennai is also supported by the counter filed by the appellant insurance company, wherein it is categorically admitted that the first respondent was engaged for a break period and



WEB COPY

that he was acting as driver. In the light of the said plea taken in the counter, I find no infirmity in the finding of the Joint Commissioner of Labour-II, Chennai that there was employer and employee relationship between the first and second respondent. It is also seen that the Joint Commissioner of Labour-II, Chennai, on the basis of evidence, returned a factual finding of fact that the accident occurred in the course of employment. The appellant has not referred to any material to compel me to take a contrary view, hence the said finding is confirmed. The learned counsel for the appellant submitted that the Joint Commissioner of Labour-II, Chennai, failed in mechanically converting the physical disability assessed at 15% as loss of earning capacity. It is not disputed that first respondent sustained fracture in the nasal bone. P.W.2, the Doctor who was examined gave evidence that the first respondent has sustained fracture nasal bone with adjacent emphysema ethmoidal, hemisinus and septal haematoma, soft tissue, swelling in nasal and frontal region. P.W.2 in his evidence further deposed that the loss of earning capacity was also 15% due to the injuries sustained by the first respondent. I find that P.W.2 is qualified Medical Practitioner and he has certified the disability sustained by the first respondent at 15%. The Tribunal on the basis of the disability certificate which was marked as



Ex.A.12 and evidence of the qualified Doctor assessed the loss of earning capacity at 15%. I find no reason to interfere with the same.

12. I am of the view that the factual finding though framed as Substantial Question of Law cannot be pressed in appeal. In view of the observations, I find no merits in the appeal and the same is dismissed. The learned counsel for the appellant submitted that entire amount has been deposited before the Joint Commissioner of Labour-II, Chennai. In view of the dismissal of the appeal, it is open to the applicant to withdraw the amount deposited. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2023

jai

Index : Yes/No

Neutral Citation : Yes/No



WEB COPY



N.MALA, J.

jai

To

The Joint Commissioner of Labour -II,
Commissioner for Employees Compensation,
Chennai.

C.M.A.No.1610 of 2020

05.04.2023