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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2722 of 2014

Murugesan

...Appellant

versus

1. Tmt.T.Rajeswari

2. The United India Insurance Company Limited

No.146, N, Kumar Complex,

Tiruchengode, Namakkal District.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the order dated 11.07.2014 passed in W.C.No.598 of 2009 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem.

For appellant : Mr.C.Kulanthaivel

For Respondent No.1 : No appearance

For Respondent No.2 : Ms.I.Malar

J U D G M E N T

The Insurance Company has come forward with this appeal, as against the order dated 11.07.2014 passed in W.C.No.598 of 2009 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem.

2. The appellant was working as a driver under the first respondent in



Taurus Lorry bearing Registration No.TN 34 E 3921 insured with the second respondent. On 22.09.2008, at about 11.30 am, while the appellant driving the lorry, some unknown persons thrown stones on the driver, for which, he was sustained grievous injuries all over his body and he was admitted in hospital. The appellant is the claimant, who filed W.C.No.598 of 2009, on the file of the Motor Accidents Claims Tribunal/Workmen's Compensation Commissioner, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him due to the accident that took place on 22.09.2008. Without considering the entire facts, the Tribunal, mechanically dismissed the claim petition, vide order dated 11.07.2014. Challenging the said order dated 11.07.2014 made in M.C.O.P.No.598 of 2009 on the file of the learned Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem has come out with this appeal.

3.The learned counsel appearing for the appellant submitted that admittedly the appellant was working as a driver with the first respondent and the lorry was insured with the second respondent. During the course of employment, some unknown persons thrown stones on the lorry. The Workmen's commissioner, without considering the fact, has been rejected the claim petition on the ground that since the FIR has been closed as



mistake of fact. Since the claimant was established that he was sustained injuries during the course of his employment as a driver of the lorry through the evidence and documents of PW1 and Ex.P1 to P7. The learned Commissioner has failed to consider that the manner and time of the accident which in the midnight and there may not be any independent eye witness. Hence, the concerned police might have filed the final report as mistake of fact and the said report is not the document to disprove all the documents of the claimant. Hence, the learned counsel for the appellant prayed to allow the appeal.

4.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the injuries sustained by the appellant has not due to the accident and not during the course of employment. The issue had happened due to previous enmity between the appellant and other persons. The said fact has elaborately discussed by the learned Workmen's Compensation Commissioner and rightly rejected the claim petition which cannot be interfered with.



5. Heard the learned counsel for the appellant as well as the 3rd respondent and also perused the materials available on record.

6. The appellant is the claimant and he was working as a driver to the first respondent. The first respondent is the owner of the lorry and the second respondent is the insurer of the lorry. The grievance of the appellant is that he sustained injuries during the course of employment and therefore, the insurance company is liable to pay the compensation for the injuries sustained by him.

7. From the materials on record, it is seen that the appellant in the FIR as well as in the claim petition has stated that the appellant was traveling in the said lorry belonging to the first respondent, he sustained injuries due to the accident. At the time of incident, some unknown persons thrown stones on the driver and he was sustained grievous injuries on his left knee, fracture. Further there are many contradictions in the FIR and Mettur G.H. Ar copy and wound certificate issued by LKM Hospital, Erode where the appellant taken treatment. The concerned Mecheri police has also closed the FIR as mistake of facts. The Commissioner, elaborately considered these facts, rejected the claim petition and has given valid and cogent reason for



rejecting the said claim. In view of the same, there is no reason to interfere with the said finding given by the Workmen's Commissioner.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

06.10.2023

Index : Yes/no
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To

The Workmen's Compensation Commissioner
cum Deputy Commissioner of Labour, Salem.



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M.DHANDAPANI.,J.

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