



C.M.A.No.3450 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------------------|-----------------------------|
| Reserved on<br>03.01.2023 | Pronounced on<br>06.01.2023 |
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CORAM

**THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN**

**C.M.A.No.3450 of 2014**  
**and**  
**M.P.Nos.1 of 2014 & 1 of 2015**

United India Insurance Co. Ltd.,  
134, Sillingi Buildings, 4th Floor,  
Greams Road,  
Chennai 600 006

... Appellants

Vs.

1.R.Senthilkumar,  
S/o.T.Rajendran,  
176, F Block, 1st Floor,  
Korukkupettai,  
Chennai 600 021.

2.V.Udayan,  
New 233, Old 448,  
C Block, Kalayanapuram,  
Vyasarpadi,  
Chennai 600 039.

... Respondents

**Prayer:** Appeal filed under Section 30 of Workmen Compensation Act, against the award dated 16.07.2014 made in W.C.No.165 of 2011 and received by the Appellant on 01.09.2014 on the file of the Commissioner for



C.M.A.No.3450 of 2014

Workmen's Compensation (DCL-I) at Chennai.

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For Appellant : Mr.C.Paranthaman

For Respondents : Mr.A.A.Venkatesan (For R1)

R2- No appearance

### **J U D G M E N T**

The Appeal has been filed against the award dated 16.07.2014 made in W.C.No.165 of 2011 and received by the Appellant on 01.09.2014 on the file of the Commissioner for Workmen's Compensation (DCL-I) at Chennai.

2.The Insurance Company is the Appellant herein. The Insurance Company challenged the compensation awarded by the Deputy Commissioner under the Workmen's Compensation Act in W.C.No.165 of 2011, dated 16.07.2014. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Appeal was admitted on the following substantial questions of law:

*(i) Whether the learned Commissioner is right is holding*



C.M.A.No.3450 of 2014

*that the 1<sup>st</sup> Respondent is an employee of the 2<sup>nd</sup> Respondent?*

*(ii) Whether the learned Commissioner is right in holding that the 1<sup>st</sup> Respondent has sustained injuries during and in the course of employment?*

*(iii) Whether the learned Commissioner failed to note that P.W.2 Doctor has not assessed the disability in accordance with schedule 1 of W.C. Act?*

4.During trial, on the side of the claim Petitioner, PW1 and PW2 were examined & Ex.P.1 to Ex.P.16 were marked and on the side of the Respondents, RW1 was examined and Ex.R.1 to Ex.R.4 were marked.

5.Heard the learned counsel appearing on behalf of the Insurance Company and the learned counsel appearing on behalf of the claim Petitioner.

6.Learned counsel appearing for the Insurance Company submitted that there is no document to show the alleged existence of employer and employee relationship between the owner of the vehicle and claim Petitioner/injured. He further submitted by relying upon Ex.P.1/FIR, which was given by the person,



*C.M.A.No.3450 of 2014*

who accompanied the claim Petitioner/injured in the cabin of the auto that the injured has taken the auto on rent and also submitted that since there is no relationship of employee and employer, the injuries sustained by the injured/claim Petitioner cannot be termed as sustained during the course of employment.

7.Learned counsel for the claim Petitioner submitted that as per Ex.P.10, the vehicle is registered in the name of the 1st Respondent in W.C.No.165 of 2011, the offending vehicle is having valid permit/Ex.P.12 and policy was also taken by the owner of the vehicle, which covers the workmen also and therefore, the claim Petition filed before the Commissioner for Workmen's Compensation (DCL-I) is maintainable. He further submitted that though the Insurance Company has engaged the services of a private investigator, the investigation report is not filed.

8.After hearing both the parties and also perusing Ex.P1/FIR, I find that as per FIR, which was given by the person, who accompanied the injured in the cabin of the auto, the injured has taken the auto on rent and hence there is no relationship of employer and employee between the injured and the owner



*C.M.A.No.3450 of 2014*

of the offending vehicle. There is a specific statement made in Ex.P1 that injured is only an hirer and not an employee of the owner of the vehicle and hence, the 1st question of law is answered in affirmative in favour of the Insurance Company.

9.The records reveal that the claim Petitioner/injured was travelled with the another person in the cabin of the auto. As per Ex.P.10/Policy, only one person can travel in the cabin, however, as per Ex.P.1/FIR, one another person along with driver/injured person/hirer of the vehicle is said to have travelled and the hirer of the vehicle is not an employee of the vehicle. More than one person travelling in the cabin is the violation of policy condition. The claim Petitioner/injured person is the hirer of the vehicle and therefore, the injuries sustained by the claim Petitioner cannot be termed as injuries sustained during the course of employment. Accordingly, the second substantial question of law is also answered in affirmative in favour of the Insurance Company.

10.With regard to the quantum of compensation, I find that the same can be accepted, however, in view of the findings rendered in respect of the substantial questions of law 1 & 2, the Insurance Company is exonerated from



C.M.A.No.3450 of 2014

its liability of making any payment and therefore, the third substantial question of law does not arise.

11.In fine, the Civil Miscellaneous Appeal is allowed and accordingly, the order and decretal order dated 16.07.2014 made in W.C.No.165 of 2011 on the file of the Commissioner for Workmen's Compensation (DCL-I) at Chennai is hereby set aside. The Insurance Company is permitted to withdraw the amount deposited by them before the Tribunal to the credit of W.C.No.165 of 2011, on the file of the Commissioner for Workmen's Compensation (DCL-I) at Chennai. No costs. Consequently, connected Miscellaneous Petitions are closed.

**06.01.2023**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order

*sai*

To

The Additional Commissioner of Labour - I,

6/8



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*C.M.A.No.3450 of 2014*



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*C.M.A.No.3450 of 2014*

**RMT.TEEKAA RAMAN.J,**

*sai*

**Pre-delivery Judgment made in**

**C.M.A.No.3450 of 2014**

**and**

**M.P.Nos.1 of 2014 & 1 of 2015**

**Dated:06.01.2023**