



CMA(MD)No.831 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.831 of 2010

and

M.P(MD)No.1 of 2010

The Divisional Manager,
New India Assurance Company Limited,
II Floor, Rosary Buildings,
No.61, Town Hall road,
Madurai - 625 001.

....Appellant

Vs.

1.N.Muthu

2.N.Krishnamoorthy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the award passed by the Workmen's Compensation Commissioner, Madurai in W.C.No.63 of 2007 dated 30.03.2010.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



CMA(MD).No.831 of 2010

JUDGMENT

WEB COPY

The present appeal has been filed by the Insurance Company challenging the award passed by the Workmen's Compensation Commissioner, Madurai in W.C.No.63 of 2007 primarily on the ground of liability.

2. According to the claimant, he was driving the vehicle belonging to the first respondent in the claim petition and an accident has taken place at about 03.00 am on 12.12.2005. The claimant has contended that he was employed as a driver with the first respondent and was earning a sum of Rs.4,000/- per month as salary and Rs.100/- as batta from the said respondent. The claimant has further contended that he had sustained grievous injuries below both eyes, nose bone, cut injury in the right side of the face and other multiple injuries over the body. According to the claimant, originally he was taken to Theni Medical College Hospital and thereafter, he was referred to Government Rajaji Hospital, Madurai for further treatment. The claimant has prayed for a sum of Rs.4,00,000/- towards compensation.



CMA(MD).No.831 of 2010

3. The alleged employer namely, the first respondent, had remained exparte and the second respondent has filed a counter contending that the claimant is none other than the brother of the owner of the vehicle. The family members of the claimant and his brother have travelled in the jeep for a family function. Therefore, there is no employer-employee relationship between the claimant and the owner of the vehicle. Once there is no employer-employee relationship, the claimant cannot seek compensation under the Workmen's Compensation Act.

4. The Commissioner after considering the oral and documentary evidence, arrived at a finding that whatever stated in the claim petition has not been specifically disputed by the Insurance Company. The Commissioner has further found that the claimant is a driver of the first respondent which is disclosed in the FIR. Thereafter, the Commissioner proceed to fix the compensation at Rs.1,36,560/-. This award is under challenge in the present appeal.



5. The appeal was admitted on the following substantial question of law.

"(1) Is not the findings of the Workmen's Compensation Commissioner perverse regarding the employer-employee relationship between the insured and the claimant in the absence of any substantial evidence to prove the same?"

6. The learned counsel appearing for the appellant had drawn the attention of this Court to the FIR lodged by the owner of the vehicle which is marked as Ex.P1. A perusal of the FIR indicates that the claimant was not driving the vehicle in the capacity as a driver of the first respondent, but only as a brother of the first respondent. He further contended that if the first respondent is an employer, the claimant should have examined the first respondent in order to prove that he is employed with the first respondent. The learned counsel appearing for the appellant further pointed out that in paragraph nos.4 and 6 of the counter, the Insurance Company has specifically disputed



CMA(MD).No.831 of 2010

the employer-employee relationship between the claimant and the first respondent. Without properly appreciating the said counter, the Commissioner had arrived at a finding that the Insurance Company has not specifically disputed the employer-employee relationship. He further contended that in the FIR lodged by the first respondent, there is no reference about the claimant being the paid driver of the first respondent. Therefore, when the employer-employee relationship has not been established, the Commissioner will not have any jurisdiction whatsoever to entertain the petition under the Workmen's Compensation Act.

7. Though the claimant contends that he is employed with the first respondent, the alleged employer has not chosen to appear either in person or through the counsel. A perusal of the First Information Report clearly indicates that the claimant is the brother of the first respondent. There is no reference about the employer-employee relationship in the First Information Report. Though the claimant contended that he is employed with the first respondent for a monthly



CMA(MD).No.831 of 2010

salary of Rs.4,000/-, he has not chosen to examine the first respondent.

The Insurance Company in paragraph nos.4 and 6 of their counter has specifically pointed out that the claimant and the first respondent being brothers, there is no employer-employee relationship and only to attend the family function they have travelled in the Jeep at the time of the accident. However, the Commissioner has not properly appreciated the counter and has proceeded to arrive at a finding that the Insurance Company has not disputed the employer-employee relationship. The Commissioner without properly considering the FIR has arrived at an erroneous finding that the FIR speaks about the employer-employee relationship. No document has been placed before the Court to prove the employer-employee relationship. On the other hand, the FIR lodged by the first respondent clearly indicates that the claimant is none other than the first respondent's brother and there is no relationship of employer-employee. In view of the above said facts, the Workmen's Compensation Commissioner will not have jurisdiction to entertain the claim petition under Workmen's Compensation Act.



CMA(MD).No.831 of 2010

8. The Policy of the vehicle has been marked as Ex.R1 on the side of the Insurance Company. A perusal of the Policy indicates that premium has been paid towards compulsory Personal Accident Policy to owner cum driver. In view of the findings arrived at in the preceding paragraph, it is clear that the claimant cannot be considered to be a driver. On the other hand, he can only be considered as owner cum driver to whom the coverage under the Personal Accident Policy would be available.

9. A perusal of the disability Certificate which is marked as Ex.P8 indicates that the claimant has suffered disability of 27%. As per the Personal Accident coverage Policy, the coverage can be invoked even for the injuries sustained by the owner. Therefore, this Court is of the view that the claimant would be entitled to receive compensation under the Personal Accident coverage at the rate of Rs. 2,000/- per percentage for the disability. Therefore, the claimant would be entitled to receive a sum of Rs.54,000/- (Rupees Fifty Four Thousand only).



CMA(MD).No.831 of 2010

10. In view of the above said deliberations, the question of law is answered in favour of the appellant / Insurance Company. The quantum of award is reduced from Rs.1,36,560/- (Rupees One Lakh Thirty Six Thousand and Five Sixty only) to Rs.54,000/- (Rupees Fifty Four Thousand only). The interest awarded by the Commissioner stands confirmed. The Civil Miscellaneous Appeal is allowed to the extent as stated above. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

mbi

To

- 1.The Workmen's Compensation Commissioner,
Madurai
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD).No.831 of 2010

R.VIJAYAKUMAR,J.

mbi

C.M.A(MD)No.831 of 2010

02.06.2023