



C.M.A(MD)No.1090 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1090 of 2017

and

C.M.P(MD)No.11121 of 2017

The Branch Manager,
National Insurance Company Limited,
5A, Sub Collector Office Road,
Opp. to Court Complex,
Dindigul.

... Appellant/2nd Respondent

Vs.

1.A.Natarajan

... Respondent/Petitioner

2.P.Palanisamy

... Respondent/1st Respondent

3.The Managing Director,
Green Health Agro Oils,
Thirumanampatti,
Reddiarchathiram Via,
Dindigul District.

... Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Employees Compensation Act, to set aside the award, dated 08.09.2017 (which was received by the appellant insurance company on 21.09.2017 vide enclosed postal cover) made in E.C.No.32 of 2012 on the file of the Commissioner for Employees Compensation, (Deputy Commissioner of Labour), Dindigul and be pleased to dismiss the claim as against the appellant.



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For Appellant : Mr.J.S.Murali

For Respondents : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging an award passed by the Commissioner of Employees Compensation, Dindigul in E.C.No.32 of 2012.

2. According to the claimant, he is a cleaner in crane service and employed with the 1st respondent in the claim petition. While he was on duty, the driver of the crane had driven the said vehicle in a rash and negligent manner and it got capsized and he was thrown away from the cabin and he sustained amputation below the knee. Hence, he prayed for a compensation of Rs.15,00,000/-.

3. The owner of the crane had filed a counter disputing the employer-employee relationship and he has further contended that the claimant was never employed by him as a cleaner. The insurance company of the said crane had filed a counter contending that in a crane, only one person, namely the driver can sit and operate the vehicle and



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an unauthorized person. Therefore, the company was not liable to pay the compensation.

4. The commissioner after considering the arguments and the document filed on either side, arrived at a finding that the claimant was employed with the 1st respondent in the claim petition and the claimant was working as a cleaner along with the driver at the time of accident. He has further found that the accident has taken place only during the course of employment. The Commissioner has proceeded to fix the compensation at Rs.3,65,075/- and directed the insurance company to satisfy the said award amount on the ground that the vehicle is insured with the appellant insurance company. The said award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant had contended that the 1st respondent has disputed the employer-employee relationship with the claimant. When there is no employer-employee relationship, the Commissioner under the Workmen's Compensation will not have any jurisdiction whatsoever to entertain a claim petition. He further contended that Exhibit R.1 is the insurance policy and Exhibit R.2 is the R.C book relating to the crane. According to the learned counsel appearing for the appellant, Exhibit R.2 R.C book would reveal that the



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crane has got a seating capacity of only one. Therefore, except the driver, no other person to get accommodated within the cabin of the crane.

However, at the time of accident, it is admitted by the claimant himself that he had accompanied the driver inside the cabin. Therefore, it is a case of unauthorized person sitting inside the cabin. Therefore, the insurance company is not liable to pay any compensation.

6. The learned counsel appearing for the appellant had further contended that though the injury of the claimant falls within the schedule injury as per the Workmen's Compensation Act and the claimant has sustained only 50% disability as per the said schedule, the Commissioner has proceeded to fix at 60% which is not in accordance with schedule under the Workmen's Compensation Act. Hence, he prayed for allowing the appeal.

7. Though the owner of the crane has been served, he has not chosen to appear either in person or through counsel. There is no representation on the side of the claimant.

8. A perusal of Exhibit R.2 R.C book clearly indicates that the crane has got seating capacity of one which is meant for the driver of the crane. A perusal of F.I.R which is marked as Exhibit P.3 reveals that the



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claimant was sitting along with the driver inside the cabin of the crane.

Therefore, it is clear that the claimant was an unauthorized person inside the cabin of the crane. Therefore, as rightly contended by the learned counsel appearing for the appellant, there is a clear violation of the statutory provisions and therefore, they are not liable to pay any compensation whatsoever.

9. Though it is contended by the learned counsel appearing for the appellant that there is no employer-employee relationship, it could be seen from the evidence of P.W.2 who is the driver, the claimant had accompanied him at the time of the accident as a cleaner of the vehicle. Therefore, this Court does not find any material to interfere in the finding of the Commissioner that there is an employer-employee relationship.

10. In view of the above said facts, the substantial question of law raised by the appellant insurance company is answered in favour of the appellant insurance company and the appellant is exonerated. However, the 1st respondent in the claim petition, namely the owner of the crane is liable to pay the compensation fixed by the Commissioner of Employees Compensation in view of the fact that there is employer-employee relationship.



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11. In view of the above said deliberations, the appeal stands allowed and the appellant is exonerated. The liability is fixed upon the 1st respondent in the claim petition to satisfy the award passed by the Commissioner under Workmen's Compensation Act in W.C.No.32 of 2012. The appellant is said to have deposited the entire award amount. The Commissioner, Workmen's Compensation is directed to refund the said amount along with accrued interest, if any.

12. With the said observations, the Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.06.2023

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

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To

1.The Commissioner for Employees Compensation,
(Deputy Commissioner of Labour),
Dindigul.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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