



C.M.A(MD)No.563 of 2017

WEB CO **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 15.03.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.563 of 2017

and

C.M.P(MD)No.6008 of 2017

The Manager,
Bajaj Allianz General Insurance Company Limited,
C.M.A. Complex,
125, Ramnagar,
By-pass Road,
Madurai-625 016.

... Appellant /
Respondent No.2

Vs.

1.Ramakrishnan
2.A.Thomas Ammal

... Respondent No.2/
First Respondent

PRAYER : This Civil Miscellaneous Appeal is filed under Section 30 of the Employee Compensation Act, to set aside the order passed in W.C.No.43 of 2013 on the file of the Commissioner for Employees Compensation, Dindugal by allowing the Civil Miscellaneous Appeal.



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For Appellant : Mr.V.Sakthivel

For R-1 : Mr.R.Ravindran

For R-2 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal arises out of an award passed by the Workmen Compensation Tribunal in W.C.No.43 of 2013 on the file of the Workmen Compensation Tribunal, Dindigul.

2. According to the claimant, he was driving a TOYOTA INNOVA car which was owned by the first respondent herein and met with an accident on 25.12.2012 in Periyakulam to Vathalagundu road near Saravana Mills. The claimant had contended that he was employed by the first respondent as a driver for a monthly salary of Rs.9,000/-. According to the claimant, he had sustained injuries like fracture of left clavicle, fracture of left scapula, left hemothorax (resolved), fracture of multiple ribs with left lung collapse and thorocotomy with ICD with IPPB. The claimant claimed a sum of Rs.10,00,000/- towards compensation under the Workmen Compensation Act.



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3. The vehicle belonging to the first respondent was insured with the second respondent. The first respondent, who is admittedly the owner of the TOYOTA INNOVA car had remained *ex parte* and a counter was filed by the Insurance Company contending that there is no employer / employee relationship between the claimant and the first respondent herein. The Insurance Company has further pointed out that the name of the claimant has been mentioned as 'friend' in the FIR registered arising out of the said accident.

4. The Insurance Company had examined their investigator as R.W.1 and marked an affidavit said to have been sworn in by the owner of the vehicle. As per the said affidavit, the owner has handed over the vehicle to one Balamurugan, who was running a Travels Company. They have taken the vehicle to Sabarimala using the said Ramakrishnan as a driver of the vehicle. She has further stated in the affidavit that Ramakrishnan is not employed by her as a driver of the vehicle and she has disputed the employer / employee relationship in the said affidavit.



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5. The Workmen Compensation Tribunal after considering the oral and documentary evidence has arrived at a finding that the claimant has actually driven the vehicle at the time of the accident and the claimant claims that he has been employed as a driver by the first respondent. The first respondent despite service of notice had not appeared before the Tribunal and she has remained *ex parte*. Further in the FIR also it has been pointed out that the claimant was driving the vehicle. Based upon the said facts, the Tribunal arrived at a finding that the claimant was employed as a driver with the first respondent. Thereafter, the Tribunal proceeded to fix the compensation at Rs.2,59,724/- along with medical expenses of Rs.1,01,717/- totalling a compensation of Rs.3,61,441/-. This award of the Tribunal is under challenge in the present appeal.

6. The Insurance Company has filed the present appeal primarily on the following substantial question of law:

“Whether in absence of evidence about the employment, the Commissioner for Employees Compensation has got powers to direct the Insurance Company to pay the



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award amount to the employee?

7. The substantial question of law that arises for consideration in the present appeal is that whether the claimant has established his employer / employee relationship with the first respondent, who is admittedly the owner of the TOYOTA INNOVA car which met with an accident on 25.12.2012.

8. The claimant in paragraph No.1 of the claim petition has categorically contended that he was employed as a driver under the first opposite party for the past six months on a monthly salary of Rs.9,000/- per month. The first respondent though having been served in the petition has not chosen to appear or file any counter disputing the employer / employee relationship.

9. The Insurance Company had marked an affidavit said to have been sworn in by the owner of the vehicle. As per the said affidavit, the first respondent, namely, the owner had disputed her employer /



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employee relationship with the claimant. It is an admitted fact that the first respondent was alive at the time, when the affidavit was marked before the Tribunal. This affidavit has no sanctity in the eye of law and the same cannot be marked when the deponent is alive, without examining the deponent. Therefore, the said affidavit cannot be relied upon to arrive at a conclusion that there was no employer / employee relationship between the claimant and the first respondent . If really the first respondent want to contend before the Court that the claimant is not her driver, she could have very well filed her counter before the Tribunal. However, she has chosen to remain *ex parte* for reasons best known to her.

10. An FIR has also been registered touching upon the said accident in Crime No.347 of 2012 on 25.12.2012 before the Devadhanapatti Police Station. As per the said FIR, the de-facto complainant one Chinnasamy, who was a co-passenger in TOYOTA INNOVA car had given a statement that his friend Ramakrishnan was driving the car at the time of the accident. Therefore, it is clear that the



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claimant has established his employer / employee relationship with the first respondent herein.

11. As far as the quantum of compensation is concerned, the Tribunal has followed the statutory provisions and fixed the quantum as at Rs.2,59,724/- and added the medical bills and arrived at a total quantum of Rs.3,61,441/- which this Court does not find as unreasonable or exorbitant or as against the statutory provisions.

12. In view of the above said deliberations, the substantial question of law is answered as against the appellant and this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR, J.

BTR

To

- 1.The Commissioner,
Employees Compensation,
Dindugal.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.M.A(MD)No.563 of 2017

15.03.2023