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C.M.A.No.1334 of 2021

C.M.A.No.1334 of 2021
and C.M.P.No.6850 of 2021

M.DHANDAPANI, J.

This Civil Miscellaneous appeal is listed today at the instance of the Registry.

2. It is brought to the notice of this Court that though the final award in E.C.No.265 of 2015, which was under challenge before this Court, was passed on 23.12.2019, the order of this Court dated 04.12.2024, by which, the appeal was allowed, inadvertently, the date has been mentioned as 23.10.2019 instead of 23.12.2019. Therefore, it is prayed that the said error may be rectified.

3. This Court perused the said order dated 04.12.2024 and is satisfied that a typographical error has crept in, wherein the date of the impugned order has been wrongly mentioned as 23.10.2019. Accordingly, the date of the final award wrongly mentioned as 23.10.2019 shall stand corrected as 23.12.2019 in the order dated 04.12.2024, wherever it occurs.



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4. All the other conditions and observations made in the earlier order dated 04.12.2024 shall remain intact, except for the above said correction.

5. Registry is directed to make the necessary corrections in the order dated 04.12.2024 and issue fresh order copy to the parties.

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C.M.A.No.1334 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1334 of 2021
and C.M.P.No.6850 of 2021

M/s.United India Insurance
Company Limited,
'Silingi Building' IV Floor,
No.134, Greams Road,
Chennai-600 006.

... Appellant/2nd respondent

Vs.

1.G.Vinoth kumar

...Respondent/claimant

2.S.Venkatesan

... Respondent/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the final award dated 23.10.2019, (received on 22.01.2020) passed in E.C.No.265 of 2015, by the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai and dismiss the above claim petition.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.Mr.K.Varada Kamaraj for R1
Mr.G.Punniyakoti for R2



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JUDGMENT

WEB COPY The above appeal has been filed to set aside the judgement and decree dated 23.10.2019 made in E.C.No.265 of 2015 on the file of the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai

2. It is the case of the appellant that the first respondent/claimant had filed an employee compensation claim before the Joint Commissioner of Labour-II, Chennai under the Workmen's Compensation Act, 1923, alleging that he is employed under the second respondent herein, on monthly salary of Rs.15,000/- and the second respondent is the owner of the car bearing Registration No.TN 07 BC 9000. On 03.05.2015 at about 23.30 hours, while the first respondent/claimant was proceeding at Nagari - Pallipattu Main Road in the aforesaid car as per the instruction of the 2nd respondent/employer, near Karakandapuram Village, Nagari Mandal, Chittor District, suddenly, an unknown person crossed the road and to avoid the accident, when the first respondent turned left side, he dashed against the road side wall and due to which, the first respondent sustained injuries and thereby, he filed a Employees compensation claim before the Labour Commissioner-II,



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Chennai in E.C.No.265 of 2015 and the Labour Commissioner-II,

Chennai, vide award dated 23.10.2019 awarded a compensation of Rs.3,52,665/- along with Rs.11,160/- towards medical expenditure in favour of the first respondent payable by the appellant. Challenging the same, the present appeal has been filed.

3. The learned counsel for the appellant submitted that admittedly, the second respondent had insured the vehicle with the appellant / insurance company. In the present case, in order to prove that the first respondent/claimant is the employee of the second respondent, he relied upon Ex.P1, F.I.R, as the informant was one Vinayagam, who is the friend of the first respondent's father. The said Vinayagam lodged the complaint before the law enforcing agency stating that the first respondent is his friend Gunalan's son and that the first respondent, in order to attend the function of tonsure and ear piercing ceremony of Reddiyappa's Children, who is residing at Bangarupalayam, Chittor District, borrowed Maruthi Swift Car from one Arun Kumar, who is the friend of the first respondent, however the said car was owned by the Arun Kumar's father Venkatesan. The said Venkatesan was arrayed as the first respondent before the Labour Commissioner-II, Chennai,



however, he was not examined. The learned counsel submitted that even

Ex.P1, FIR did not reveal with regard to the employee and employer relationship between the first and second respondent. In the absence of employee and employer relationship, the Labour Commissioner-II instead of dismissing the claim, had fastened the entire liability as against the appellant/insurance company, which is not sustainable and the Labour commissioner ought to have dismissed the claim made by the 1st respondent under the employee compensation Act as there is no employee and employer relationship between the 1st and 2nd respondent. Further, in support of his contention, the learned counsel for the appellant relied upon the decision made by a learned Single Judge of this Court in C.M.A.No.1770 of 2018 dated 02.03.2021, wherein, the learned Single Judge has held as follows:

"7.On a perusal of the facts and circumstances also reveals that they had no other purpose except to travel for sight seeing along with friends. In such circumstances, if at all the deceased claims to be a driver engaged, then the onus lies on the claimant to establish that he was a professional driver engaged to drive and employer and employee relationship existed at the time of accident. It is not even stated that the deceased Prathap was appointed by the owner of the vehicle. The



appointment was not stated. The particulars regarding the appointment or engagement also not been described and therefore, this Court is not able to establish that employer and employee relationship existed.

8. It is mandatory under the statute that the employer and employee relationship is to be established and the accident must be occurred during the course of appointment. If these two requirements are established by the claimants, then alone they are entitled for compensation and liability can be fixed on the insurance company with reference to the policy. The factum regarding the accident is established, coverage of the policy was also established. However, the facts as narrated in F.I.R and on perusal of the deposition of the witnesses reveals that there was no employer and employee relationship existed as well as the accident occurred during the course of employment. When these factums are not established beyond any doubt, the Deputy Commissioner of Labour has committed an error which is apparent."

The learned counsel further relied upon the judgment of the learned Single Judge of this Court made in C.M.A.No.1633 of 2018 dated 23.03.2021 and the relevant portions of which are extracted hereunder:

"7. This being the First Information Report provided by the brother of the first respondent, the said factum reveals that the accident did not occur during the course of employment. On perusal of the award, it reveals



that Ex.P1 was not considered by the Deputy Commissioner of Labour. When the first respondent has not established the accident happened during the course of employment, then the appellant/Insurance Company is not liable to pay compensation even as per the policy condition. Therefore, the Deputy Commissioner of Labour has committed an error in not considering the document marked as Ex.P1 and the facts narrated in the said document.

8. In this view of the matter, the award dated 30.08.2017 passed in E.C.No.186 of 2015 is set aside and the Civil Miscellaneous Appeal stands allowed. The appellant/Insurance Company is permitted to withdraw the deposited amount with accrued interest by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is also closed."

4. Per contra, the learned counsel appearing for the first respondent/claimant submitted that though the second respondent, employer has not appeared before the Labour Commissioner-II and was set ex parte, he is now available before this Court. Hence, this Court may set aside the award and remand the matter back to the Labour Commissioner-II, Chennai, enabling the first respondent to examine the second respondent/employer to establish the employee-employer relationship inbetween the 1st and 2nd respondent. Accordingly, the



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learned counsel prayed for appropriate orders.

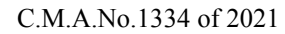
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5. On the above said contentions, heard the learned counsel appearing on behalf of the 2nd respondent and perused the materials available on record.

6. Admittedly, the first respondent filed a claim petition under the Employees Compensation Act before the Labour Commissioner-II, Chennai, claiming compensation for the injuries sustained by him due to the accident during the course of his employment under the 2nd respondent.

7. In the present case, in order to prove the employer-employee relationship, though the first respondent relied upon the F.I.R marked as Ex.P1, before the Labour Commissioner-II, however, the first respondent did not examine the informant of the F.I.R.

8. In this regard, this Court perused the materials available on record, particularly the Ex.P1. FIR, and on perusal of the same, reveals that, for the purpose of attending an ear piercing ceremony, the first respondent borrowed the car from his friend, Arun Kumar, the son of the



Village along with one Vinayagam, the informant and thereafter, when they were returning to their native village, the above said accident took place. While so, no where it reveals the employee-employer relationship between the first and second respondent and that the accident had not happened during the course of employment under the 2nd respondent.

9. In the absence of any concrete evidence to show that the 1st respondent was employed under the 2nd respondent and he sustained the above injuries during the course of his employment under the 2nd respondent, necessarily the claim made by the 1st respondent had to be rejected. However, the tribunal had entertained the claim made by the 1st respondent under the EC Act and awarded a compensation of Rs.3,52,665/-, along with Rs.11,160/- towards medical expenditure, which is *per se* illegal and the same has to necessarily be interfered with.

10. Accordingly, this Civil Miscellaneous appeal is allowed and the impugned award dated 23.12.2019 passed by the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai in E.C.No.265 of 2015 is set aside. The appellant/insurance



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company is entitled to withdraw the compensation amount, if any, deposited by them before the Labour Commissioner-II, Chennai by way of making appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1. Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai
2. The Section Officer, V.R.Section, High Court, Madras.



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