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C.M.A.No.2530 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2530 of 2021

The Divisional Manager,
New India Assurance Company Ltd.,
No.30, J.N. Street,
Puducherry – 605 001.

... Appellant

Vs.

1.Karthikeyan

2.J.Vijayakumar

3.M/s.EID Parry (India) Ltd.,
Nellikuppam, Panruti Taluk,
Cuddalore District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, against the order dated 10th day of May 2019 made in E.C.No.25 of 2017 on the file of the Court of Commissioner for Employee's Compensation - 2 (Joint Commissioner of Labour-2, Teynampet) Chennai - 6.

For Appellant : Mr.K.Vinod

For Respondents : Ms.Ramya V. Rao [R1]
No appearance [R2 & R3]



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JUDGEMENT

WEB COPY Challenging the Award passed by the Court of Commissioner for Employee's Compensation - 2 (Joint Commissioner of Labour II, Teynampet) Chennai in E.C.No.25 of 2017, dated 10.05.2019, the Insurance Company has filed the present appeal before this Court.

2. The case of the appellant is that, the 1st respondent/claimant was employed by the 2nd respondent in his tractor, which was insured with appellant/Insurance Company. As per the instructions of the 2nd respondent, he travelled in the tractor, loaded with sugarcane and went to the 3rd respondent company, where after unloading sugarcane, he was standing near the mini trailer. At that time, the tractor came backwards in a rash and negligent manner and hit the 1st respondent, thereby, he sustained grievous injuries. Therefore, the applicant has filed a claim petition claiming compensation before the court below. After adjudication, the Court below passed an award awarding a sum of Rs.5,31,288/- as compensation. Challenging the same, the appellant/Insurance Company have the present appeal before this Court.



3. Learned counsel appearing for the appellant submitted that, as per the policy taken by the 2nd respondent, persons eligible to claim compensation are driver, conductor or cleaner. However, the 1st respondent is a loadman and the loadman is not mentioned in the policy. Inadvertently, the Employee's Compensation Court, allowed the claim petition and awarded compensation in favour of the 1st respondent, which is wholly unsustainable. Accordingly, he prays for allowing the appeal.

4. Per contra, learned counsel appearing on behalf of the 1st respondent/claimant submitted that, the 1st respondent is a third party to the vehicle, though he is employed as a loadman with the 2nd respondent. However, in respect of the accident, he is a third party, in which, he is entitled to claim compensation u/s 166 of the Motor Vehicles Act since the FIR was registered as against the driver of the tractor owned by the 2nd respondent. Hence, he submitted that, this Court may grant liberty to the 1st respondent to file a fresh claim petition before the Motor Accidents Claims Tribunal u/s 166 of the Motor Vehicles Act and the period pending before the Employee's Compensation Court and this Court may be excluded for the purpose of limitation. Accordingly, he prays for appropriate orders.



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WEB COPY 5. Heard the learned counsel appearing for the appellant as well as the 1st respondent and also perused the materials available on record.

6. A perusal of the entire records, including the order passed by the Employee's Compensation Court reveals that, after unloading the sugarcane from the tractor owned by the 2nd respondent in the 3rd respondent company, the 1st respondent/claimant simply standing behind the tractor, at that time, the driver of the tractor driven the tractor in a rash and negligent manner and dashed against the 1st respondent, thereby, he sustained grievous injuries. Hence, the 1st respondent is a third party u/s 166 of the MV Act, however, the 1st respondent/claimant had filed the claim petition before the Employee's Compensation Court, which is perverse and the same is liable to be interfered with.

7. Accordingly, the order passed by the Court of Commissioner for Employees Compensation – 2 (Joint Commissioner of Labour-2, Teynampet) Chennai in E.C.No.25 of 2017, dated 10.05.2019 is set aside and the Civil Miscellaneous Appeal is allowed. However, liberty is granted to the 1st respondent/claimant to file a claim petition before the



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Motor Accident Claims Tribunal u/s 166 of the Motor Vehicles Act and upon receipt of the same, the Tribunal is directed to entertain the claim petition and decide the matter on merits and in accordance with law as expeditiously as possible. Further, the Court of Commissioner for Employees Compensation – 2 (Joint Commissioner of Labour-2, Teynampet) Chennai is directed to return all the original papers to the 1st respondent/claimant, enabling him to file a claim petition u/s 166 of the MV Act. No costs.

18.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To
The Court of Commissioner for Employees Compensation – 2 (Joint Commissioner of Labour-2, Teynampet) Chennai.



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M.DHANDAPANI, J.,

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