



C.M.A.No.1751 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.1751 of 2020
and C.M.P.No.12852 of 2020**

United India Insurance Company Limited,
Sri Sugam Complex,
No.367, College Road,
Namakkal District.

... Appellant

Vs.

1.S.Chandrasekar

2.N.Chitra

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923, against the award dated 27.04.2020 made in E.C.No.135 of 2017 on the file of the Employee's Compensation Authority (Deputy Commissioner of Labour, Coonoor).

For Appellant : Mr.C.Paranthaman

For Respondent : Mr.M.Lokesh
for R1
No appearance for R2

J U D G M E N T



C.M.A.No.1751 of 2020

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company against the award dated 27.04.2020 made in E.C.No.135 of 2017 by the Employee's Compensation Authority (Deputy Commissioner of Labour, Coonoor).

2. The facts required for disposal of this appeal are that the first respondent was working as driver of the lorry belonging to the second respondent. While so, on 30.01.2016, the first respondent had parked the vehicle near one Bhagavathi Auto works for repair works and while he was attempting to alter tarpaulin in the top of the cabin, he fell down from the top of the cabin and thereby, he sustained injuries in his right upper leg. Thereafter, he received first aid in Maruthi Hospital and thereafter, was admitted as in-patient in Ganga Hospital, Coimbatore, where he underwent surgery in his right leg, for which, he spent nearly Rs.2,00,000/-. The first respondent/claimant submitted that at the time of the accident, he was aged about 45 years old and was earning a sum of Rs.12,000/- per month and due to the accident, he sustained permanent loss of income and when he



C.M.A.No.1751 of 2020

approached the second respondent, namely, the owner of the vehicle stating that he has sustained injury during and in the course of employment, the same was rejected by the second respondent and since the vehicle was insured with the appellant/Insurance Company, the first respondent filed a claim petition under the Workmen's Compensation Act, 1923, claiming compensation of Rs.10,00,000/-.

3. The second respondent filed a counter to the petition stating that the manner of the accident and the extent of injury and subsequent disability suffered by the first respondent/claimant are to be proved by the claimant himself and therefore, the claim petition is not maintainable.

4. The appellant/Insurance Company has also filed a counter to the petition stating that the first respondent/claimant has not substantiated that the accident occurred during and in the course of employment and that the accident occurred only due to negligence of the claimant. That apart, though the accident as alleged by the first respondent/claimant has occurred on



C.M.A.No.1751 of 2020

WEB COPY

30.01.2016, the complaint was lodged by the first respondent/claimant only on 05.02.2016 which clearly demonstrates that the claimant has filed the claim petition with ulterior motive of getting compensation. The appellant/Insurance Company also disputed the fact of the loss of income and medical expenses. Thereby, the Insurance Company sought for rejection of the claim petition.

5. The learned Tribunal, after going through the facts and case and the evidence in both oral and documentary, came to the conclusion that the first respondent/claimant has sustained injuries only in and during the course of employment as driver under the second respondent and on the date of accident, the Insurance was alive and therefore, the appellant/Insurance Company is liable to pay compensation for the injuries sustained by the claimant. The Tribunal also found that though the claimant submitted that he has spent around Rs.2,00,000/- for the treatment undertaken by him in the hospital, the medical bills were submitted only for a sum of Rs.68,396/-. The Tribunal allowed the medical expenses to the extent of Rs.66,096/-. The



C.M.A.No.1751 of 2020

WEB COPY

Tribunal arrived at a monthly income of Rs.8,000/- per month and that the disability sustained by the first respondent was 35% and thereby, the Tribunal has awarded the compensation of Rs.2,84,659/- and passed an award to that extent. Challenging the same, the present appeal has been filed.

6. The learned counsel appearing for the appellant/Insurance Company submitted that the learned Commissioner has erred in coming to a conclusion that the first respondent has sustained injuries only during the course of employment. The learned Commissioner has failed to appreciate that except interested oral evidences/P.W.1 and P.W.2, who are the first respondent/claimant and the Doctor, there is no other independent witness to examine to prove that the injuries sustained during and in the course of employment. The learned counsel appearing for the appellant submitted that the Tribunal has committed an error in arriving at a disability percentage at 35% for non-schedule injury. The learned counsel further submitted that the claimant had renewed the driving license on 18.10.2016 and 25.09.2019, after the alleged accident took place on 30.01.2016, as per Ex.R1. The



C.M.A.No.1751 of 2020

WEB COPY

learned Commissioner has failed to appreciate the evidence of RTO that only if the person is fit to drive the lorry, the license could be renewed by RTO which is based on a Certificate obtained from the registered medical practitioner that the first respondent/claimant has no disability to drive the vehicle or lorry. The learned Commissioner has failed to consider the application filed by the appellant/Insurance Company to refer the claimant to appear before the Medical Board to assess the disability and the same was dismissed. Thereafter, the claimant examined P.W.2/Doctor, who assessed the disability of the claimant at 35% which is factually incorrect and therefore, the learned Commissioner has erred in awarding a sum of Rs.3,50,755/- as compensation and accordingly, the appeal has to be allowed.

7. The learned counsel appearing for the claimant submits that due to the injuries sustained by the first respondent/claimant in the accident, he was not able to drive the vehicle and the learned Commissioner, considering the injuries sustained by the first respondent/claimant and the materials



C.M.A.No.1751 of 2020

available on record, has awarded a sum of Rs.3,50,755/- as compensation.

Hence, he prays for dismissal of this appeal.

8. This Court has carefully considered the submissions made by both sides and perused the materials available on record.

9. The first respondent claimed that the accident occurred during and in the course of employment, and in order to prove the same, the first respondent marked Ex.P1, P2, P5 and P6 and based on the same, the learned Commissioner arrived at a conclusion that the first respondent/claimant has sustained injuries only during and in the course of employment as driver under the second respondent and there was a employer-employee relationship existed between the first and second respondents and on the date of accident, the Insurance was alive and therefore, the appellant/Insurance Company was liable to pay compensation for the injuries sustained by the claimant. However, the appellant/Insurance Company has not adduced any evidence to disprove the case of the claimants. Hence, the liability fixed on



C.M.A.No.1751 of 2020

WEB COPY

the Insurance Company by the learned Commissioner cannot be interfered with by this Court.

10. The learned Commissioner has taken the age of the first respondent/claimant as 45 years on the basis of the driving license/Ex.P7, where the claimant's date of birth is mentioned. With respect to the loss of income, though the first respondent claimed that he was earning a sum of Rs.12,000/- per month at the rate of Rs.100/- per day from the owner of the vehicle, since the first respondent has not filed any documentary evidence to substantiate the same, the learned Commissioner took into consideration G.O.(2D).No.91, Labour and Employment (J1) Department dated 12.12.2013, wherein the minimum wages of Rs.4,584/- and the dearness allowance of Rs.5,702/- were fixed, and arrived at a monthly salary of Rs.8,000/- as per Explanation II to Section 14(i) of the Workmen Compensation Act and thereby, it is seen that the monthly income and the age of the claimant arrived at by the Tribunal cannot be interfered with, as it is substantiated by the Tribunal.



C.M.A.No.1751 of 2020

WEB COPY

11. With respect to disability, the learned Commissioner has recorded the cross-examination of P.W.2/Doctor, who treated the first respondent. In the cross-examination, the Doctor has stated that the nature of injury sustained by the claimant did not require any surgery and he was treated as out-patient and was treated in a private hospital, Coimbatore. Further, it is stated that due to the accident, the claimant cannot drive the vehicle as he was being earlier. The learned Commissioner has also recorded that there is no contra evidence with respect to the evidence adduced by P.W.2. Therefore, the evidence adduced by P.W.2 has to be necessarily accepted. Since the first respondent/claimant after sustained injury is continuing his work as driver with certain defects, the Commissioner has arrived at the loss of earning capacity at 35% and thereby, arrived at a compensation. For all the said reasons, this Court finds that the award dated 27.04.2020 passed in E.C.No.135 of 2017 by the Employee's Compensation Authority (Deputy Commissioner of Labour, Coonoor), is a reasoned one and cannot be interfered with.



C.M.A.No.1751 of 2020

WEB COPY

12. Accordingly, this Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs. Connected miscellaneous petition is closed.

05.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1. The Employee's Compensation Authority
(Deputy Commissioner of Labour, Coonoor).
2. The Section Officer,
V.R. Section,
High Court, Chennai.



WEB COPY



C.M.A.No.1751 of 2020

M.DHANDAPANI, J.

ssb

C.M.A.No.1751 of 2020

05.11.2024