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C.M.A.No.3156 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.3156 of 2021

and

C.M.P.No.17842 of 2021

M/s.TATA AIG General Insurance Company Limited,
No.1, Commander-in-chief Road,
Ethiraja Road, Egmore,
Chennai – 600 008.

... Appellant

Vs.

1.R.Rubanrao @ Ruban

2.R.Cicil

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award, dated 13th August, 2021 passed in E.C.No.109 of 2015 by the learned Commissioner for Employees Compensation - II at Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : M/s.Ramya V. Rao [R1]
No appearance [R2]



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JUDGEMENT

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2. The case of the appellant is that, the 1st respondent/claimant was employed as Operator in the JCB 3DX Excavator Loader bearing Regn.No.TN-32-F-3482, owned by the 2nd respondent, which was insured with appellant/Insurance Company and received a sum of Rs.10,000/- as monthly salary. Whiles, as per the instructions of the 2nd respondent, he was on duty as an operator in the said JCB on 24.03.2014 and at about 15.00 hours, when he was operating the JCB at Azhukku Thotti in the Sugar Factory at Nellikuppam, the earth soil block fell on the vehicle, as a result, the JCB capsized, thereby, he sustained grievous injuries. Therefore, the applicant has filed a claim petition under the Employees Compensation Act, claiming compensation before the Commissioner for Employees Compensation in E.C.No.109 of 2015. After adjudication, the Commissioner passed an award awarding a sum of Rs.5,37,600/- as compensation in favour of the 1st respondent.



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Challenging the same, the appellant/Insurance Company have the present appeal before this Court.

3. Learned counsel appearing for the appellant submitted that, though the 1st respondent claimed compensation on the ground that he is an employee, he did not possess valid driving licence to operate the JCB and to prove his employment with the 2nd respondent. In the absence of driving licence, the Commissioner had confirmed employment of the 1st respondent with the 2nd respondent, which is wholly unsustainable. On the sole ground, the present appeal is filed. Accordingly, he prays for allowing the appeal.

4. Per contra, learned counsel appearing on behalf of the 1st respondent/claimant submitted that, due to the accident, he lost his driving licence, thereby, he was not able to produce the same before the Commissioner. Considering the same, the Commissioner had rightly awarded compensation in favour of the 1st respondent, which is wholly sustainable and the same does not require any interference at the hands of this Court. Accordingly, he prays for dismissal of the appeal.



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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 impugned order passed by the Employee's Compensation Court reveals that, the 1st respondent claimed himself to be the employee of the 2nd respondent, thereby, it is his duty to prove his employment with the 2nd respondent and further his avocation as a driver of the JCB should have been established by marking the driving licence before the Commissioner to substantiate his stand as an employee. However, without marking the driving licence and establishing his employment with the 2nd respondent, on the mere assertion, the appellant cannot contend that he is employed under the 2nd respondent. However, this elementary aspect has not been properly appreciated by the Commissioner, while adjudicating the issue and the Commissioner had erroneously confirmed the employment of the 1st respondent with the 2nd respondent, which is *per se* unsustainable. In the absence of the 1st respondent proving his case and his status of employment with the 2nd respondent before the Commissioner, the order passed by the Commissioner is liable to be set aside.



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7. Accordingly, the Civil Miscellaneous Appeal is allowed and the

Award passed by the Commissioner for Employees Compensation – II, Chennai in E.C.No.109 of 2015, dated 13.08.2021 is set aside. Further, the appellant/insurance is permitted to withdraw the amount, if any, deposited by them, before the Commissioner for Employees Compensation – II, Chennai by filing appropriate application. No costs. Consequently, the connected civil miscellaneous petition is closed.

18.12.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Commissioner for Employees Compensation – II, Chennai.



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M.DHANDAPANI, J.,

sp

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