



Civil Miscellaneous Appeal No.3114 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3114 of 2017

and

C.M.P.No.19040 of 2017

M/s.IFFCO-TOKIO General,
Insurance Company Limited,
"Iffco Bhavan", IV Floor,
No.128, Habibulla Road,
T.Nagar,
Chennai-600 017.

... Appellant

Vs.

1.R.K.Devaraj

2.L.Sathish

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 10.08.2017 passed in E.C.No.211 of 2013 by the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II), Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award dated 10.08.2017 passed in E.C.No.211 of 2013 by the Deputy Commissioner of Labour-II, Chennai.

2. The facts required for disposal of this appeal are that on 15.04.2013, the first respondent/claimant was driving an auto bearing Reg.No.TN 07 BA 0219 belonging to the second respondent from Red Hills to Ambattur. While so, near Kalikuppam Ayyappan Kovil, a cow suddenly crossed the road. In order to avert the accident, the claimant turned steering and lost the control of the vehicle and the auto toppled down, resulting in causing injuries to him and he was admitted in the hospital and took treatment. Claiming that he sustained injuries during and in the course of employment, the first respondent filed E.C.No.211 of 2013 before the Deputy Commissioner of Labour-II, Chennai. The Tribunal, after going through the evidence and the documents placed on record, came to a conclusion that the first respondent/claimant was working as employee under the second respondent and the accident occurred during and in the course of employment. On the basis of the conclusion arrived at, the Tribunal



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awarded a compensation of Rs.2,09,455/- payable by the appellant/Insurance Company under whom the vehicle was insured. Challenging the said award, the Insurance Company is before this Court in this appeal.

3. The learned counsel appearing for the appellant challenges the award on the ground that the Deputy Commissioner of Labour has overlooked the fact that there was no documentary evidence to prove the employment of the first respondent as auto driver under the second respondent herein. He further argued that except oral evidence of the first respondent/claimant, no independent witness was examined with regard to the alleged employment of the claimant under the second respondent and therefore, the employer-employee relationship never existed between the first respondent and the second respondent and thereby, the award is totally erroneous.

4. Though notice was served on the respondents, none appeared on behalf of the respondents. Hence, considering the pendency of the appeal,



this Court is inclined to dispose of this appeal based on the materials available on record.

5. This Court, after carefully going through the materials placed on record, is able to find that admittedly, the accident occurred due to the negligence of the first respondent/claimant and immediately, he was admitted in the hospital and took treatment from 15.04.2013 to 16.04.2013. An FIR was registered regarding the accident and the charge sheet was also filed. As much as 13 documents were filed by the claimant before the Tribunal, namely, FIR, Discharge summary, accident report, CT Scan report, medical bills, prescriptions, RC Book and also a copy of the Insurance Policy and permit, driving license, charge sheet and Wound Certificate, it is clear that no documents such as salary slip or letter from the employer was filed to substantiate that the first respondent/claimant was working as driver under the second respondent before the Tribunal and that he was paid the salary of Rs.9,000/- per month along with batta of Rs.50/- per day and therefore, this Court is satisfied that there was no employer-employee relationship between the first respondent and the second respondent and therefore, the conclusion arrived at by the Tribunal is erroneous and not justifiable. Accordingly, the award dated



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10.08.2017 passed in E.C.No.211 of 2013 by the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II), Chennai, is set aside.

6. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

11.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

ssb

To

The Commissioner for Employees Compensation (Deputy Commissioner of Labour-II), Chennai.



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M.DHANDAPANI, J

ssb

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