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C.M.A.No.448 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.448 of 2020

And

C.M.P.No.2600 of 2020

The Oriental Insurance Company Limited
TP HUB, No.115, Oriental House,
2nd Floor, Broadway,
Chennai 600 001.

... Appellant

Vs.

1.Elumalai
2.Late.Manjula
K.Ravi

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order dated 29.07.2019 made in E.C.No.273 of 2017, on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour – II) at Chennai and be pleased to dismiss the above application.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.R.Selvakumar for R1
R2 – No Appearance



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J U D G M E N T

The second respondent before the Commissioner of Workmen Compensation is the appellant herein. This appeal has been filed seeking to set aside the order dated 29.07.2019 made in E.C.No.273 of 2017, on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour – II) at Chennai.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour – II) at Chennai, claiming compensation of Rs.20 Lakhs alleging that on 07.05.2016 at about 06.30 hours, under the instruction of the second respondent the first respondent worked as paid driver of the car bearing Registration No.TN-07-AU-8452 at Villukam (Chengee to Thindivanam) Road and he met with accident.

3.The learned counsel appearing for the appellant further submitted that after adjudication, the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour – II) at Chennai, fixed a sum of Rs.7,98,192/- + Rs.14,040/- for medical expenses as compensation and directed the appellant to deposit the amount along



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with interest at the rate of 12% from the date of accident till the date of deposit for the compensation amount of Rs.7,98,192/-, by way of demand draft drawn in favour of the Joint Commissioner of Labour-II, Chennai before the Court of Commissioner of Workmen's Compensation – II at Chennai, within a period of 30 days from the date of receipt of a copy of the order. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant further submitted that one Manjula is the owner of the vehicle insured with the appellant and she died on the spot and one Meena who is the relative of the said Manjula's husband/ second respondent/ K.Ravi sent information to the second respondent and the second respondent made complaint before the law enforcing agency and a case was registered in Crime No.229 of 2016 for the offence under Sections 279, 337 and 304 (A) of I.P.C.

5.The learned counsel appearing for the appellant further submitted that the second respondent in his complaint has clearly stated that his wife Manjula after worshipping the deity at Melmalayanur was returning to Guduvancherry on 07.05.2016 in the



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car owned by her and the car was driven by his wife Manjula and in order to avoid collusion with the vehicle which came in the opposite side, she applied sudden brake, due to which the subject vehicle hit on the tamarind tree, due to which the said Manjula died and the other occupants sustained injuries.

6.The learned counsel appearing for the appellant further submitted that the second respondent was examined as R.W.1, however, R.W.1 contrary to his own statement, deposed as if the first respondent is the employee under him and believing his words, the Authority under the Employees Compensation Act, passed award in favour of the first respondent. The learned counsel further submitted that the Doctor assessed the disability as 70% and the Doctor who assessed the disability is not the Doctor who gave treatment to the first respondent, however, the Authority under the Employees Compensation Act passed award as though the first respondent sustained 100% disability, which is impermissible one and further submitted that the first respondent sustained only fracture injuries.

7.Per contra, the learned counsel appearing for the first respondent submitted that admittedly, the subject vehicle was owned



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by one Manjula and the second respondent who is the husband of the said Manjula made complaint before the law enforcing agency based on the information given by one Meena, however, the said Meena is not an eye witness. Eye witnesses are one Vasantha and Saritha, however, the said Vasantha and Saritha were not examined. The learned counsel further submitted that before the Authority under the Employees Compensation Act, the second respondent/ husband of the deceased Manjula admitted that the first respondent worked under him and such statement cannot be ignored and hence the Authority under the Employees Compensation Act, awarded just and fair compensation, which warrants no interference.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

9.The accident and the manner in which the accident happened are not disputed. The first respondent/ claimant examined himself as P.W.1 before the Authority under the Employees Compensation Act and deposed that he worked under the second respondent as driver. In the present case, at the time of accident, three other persons



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travelled along with P.W.1, namely, Manjula/ wife of the second respondent, Vasantha and Saritha. The said Manjula died due to the accident and Vasantha and Saritha who are the eye witness were not examined before the Authority under the Employees Compensation Act. Without examining any eye witness, the appellant Insurance Company questioning the negligence aspect is not sustainable one.

10.Insofar as the quantum of compensation is concerned, though P.W.2 Doctor assessed the disability of the injured claimant as 70%, the Authority under the Employees Compensation Act fixed the disability of the first respondent as 100% is impermissible one. The first respondent sustained only fracture injuries and it is not functional disability. Hence, this Court fix the disability of the injured claimant as 70%. Accordingly, the compensation works out to Rs.5,58,734.40 rounded off to Rs.5,58,734/- $[60/100 \times 166.29 \times \text{Rs.8,000/-} \times 70\%]$. The amount of Rs.14,040/- awarded for medical expenses is confirmed.

11.The first respondent/ claimant is entitled to a sum of Rs.5,58,734/- + Rs.14,040/- for medical expenses as compensation and the appellant is directed to deposit the modified amount along



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with interest at the rate of 12% from the date of accident till the date of deposit for the compensation amount of Rs.5,58,734/-, by way of demand draft drawn in favour of the Joint Commissioner of Labour-II, Chennai, before the Court of Commissioner of Workmen's Compensation – II at Chennai, less the amount already deposited if any, within a period of 30 days from the date of receipt of a copy of this judgment. The appellant Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

12.The civil miscellaneous appeal is partly allowed. The order dated 29.07.2019 made in E.C.No.273 of 2017, by the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour – II) at Chennai, is modified to the above extent. No costs. Consequently, the connected miscellaneous petition is closed.

14.11.2024

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

To
1.The Commissioner of Workmen's Compensation
(Deputy Commissioner of Labour – II) at Chennai.



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M.DHANDAPANI,J.
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