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C.M.A. No.320 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.320 of 2021

and

C.M.P. No.2199 of 2021

The New India Assurance Co. Ltd.
Justice Basheer Ahmed Building,
Moore Street,
Chennai – 600 001.

.... Appellant

vs.

1.R. Srinivasan
2. R. Kamalakannan

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the judgment made on 19.12.2005 in W.C. No.134 of 2005 on the file of the Commissioner for Workmen's Compensation – 2 (Deputy Commissioner of Labour – 2), Chennai – 600 006.

For Appellant	:	Mr.K. Padmanabhan
For Respondents	:	Ex-parte

JUDGMENT

This appeal has been filed by the Insurance Company challenging the order dated 19.12.2005 passed by the Commissioner for Workmen's



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Compensation – 2 (Deputy Commissioner of Labour – 2), Chennai – 600

006/

2. The Workmen's Commissioner under the impugned award has directed the appellant / Insurance Company to pay a total compensation of Rs.2,33,568/- to the 1st respondent / applicant for the alleged injuries sustained by him as a result of an accident caused by the vehicle insured with the appellant.

3. Heard Mr.K.Padmanabhan, learned counsel for the appellant / Insurance Company. The 2nd respondent has been duly served with the notice in this appeal and the 1st respondent has been served through Substituted Service. The names of both the respondents are printed in the cause list today. Despite the same they have chosen not to defend this appeal hence they are set ex-parte by this Court.

4. The main contention of the appellant / Insurance Company before this Court is that the 1st respondent / applicant has not produced any evidence to prove that he was under the employment of the 2nd respondent (insured). They would also contend that the notional monthly



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income fixed by the Commissioner under the impugned award is excessive and it is not in accordance with the provisions of the Workmen's Compensation Act.

5. Before the Commissioner, the 1st respondent / applicant has filed seven documents, which were marked as Exhibits viz., Ex.A1 to A7. None of those Exhibits contain the proof that the the 1st respondent / applicant was employed with the 2nd respondent (insured). In order to come within the purview of the Workmen's Compensation Act, the 1st respondent / applicant will have to prove that he was under the employment of the 2nd respondent (insured) and the accident happened only during the course of the said employment. The first contention viz., the 1st respondent / applicant was employed with the 2nd respondent has not been proved since the 1st respondent / applicant has not filed any documentary evidence to substantiate his claim that he was under the employment of the 2nd respondent, who had insured his lorry with the appellant / Insurance Company.

6. Before the Commissioner, the 2nd respondent (insured) had also remained ex-parte and even before this Court he has remained ex-parte.



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The 2nd respondent was also not examined as a witness before the Commissioner to prove that the 1st respondent / applicant was his employee. In the counter statement filed by the appellant / Insurance Company before the Commissioner, specifically it has been denied that the 1st respondent is an employee of the 2nd respondent (insured). Even without any documentary evidence to substantiate the claim of the 1st respondent / applicant that he was employed as a Cleaner by the 2nd respondent (insured), the Commissioner has erroneously under the impugned award has held that the 1st respondent is an employee of the 2nd respondent and has awarded a compensation for the alleged injuries sustained by him as a result of an accident caused by a lorry owned by the 2nd respondent and insured with the appellant. If the 1st respondent / applicant was really an employee of the 2nd respondent (insured), he would have at least defended the appeal by entering appearance. However, he has chosen not to enter appearance in this appeal and therefore an adverse inference can be drawn against the 1st respondent / applicant that he was not an employee of the 2nd respondent (insured). Since the 1st respondent / claimant has not proved that he is an employee of the 2nd respondent (insured), he is not entitled to make a claim under the Workmen's compensation Act. The Commissioner has erroneously



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by total non application of mind to the evidence available on record has erroneously directed the appellant to pay the determined compensation to the 1st respondent / applicant. Hence the impugned award has to be set aside by this Court.

7. Accordingly the impugned order dated 19.12.2005 passed by the Commissioner for Workmen's Compensation – 2 (Deputy Commissioner of Labour – 2), Chennai – 600 006 is hereby set aside and this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. The appellant / Insurance Company is permitted to withdraw the amount deposited with the Commissioner by filing an appropriate application.

01.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2



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ABDUL QUDDHOSE, J.

vsi2

To

1.The Commissioner for Workmen's Compensation – II
(Deputy Commissioner of Labour – 2),
Chennai – 600 006.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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