



C.M.A.(MD)No.1444 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 22.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1444 of 2013

and

M.P(MD) No.1 of 2013

The Branch Manager
The TATA AIG General Insurance Co., Ltd.,
Madurai

... Appellant/ Respondent No.2

Vs.

1. S.Guhan
2. N.Murugesan

... Respondent/Petitioner
..Respondent/Respondent No.1

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, to set aside the award dated 20.12.2012 made in W.C.No.241 of 2008 on the file of the Commissioner of Workmen Compensation(Deputy Commissioner of Labour),Madurai received on 20.05.2013 and allow this appeal

For Appellant	: Mr.J.S.Murali
For R1	: Mr.M.Sarvagan
For R2	: No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in W.C. No.241 of 2008, wherein the first respondent herein has filed a claim petition before the Tribunal for claiming compensation.

2. The Tribunal has awarded a sum of Rs.1,57,560/- and directed the appellant/second respondent herein to deposit the amount with 12% interest. Aggrieved over the order of the Tribunal, the appellant/second respondent has preferred this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief contention of the petition filed before the Tribunal are as follows:

The petitioner was working as a loadman in the Annai Art Galaxy Stone workshop , Pasumalai. The vehicle bearing Reg.No. TN 65 E 6978 belongs to one Murugesan and he was also partner of the said company. On 23.05.2008 at about 1.30 am., when the petitioner was loading the stone in the said auto as load man the auto was driven by its driver in a rash and negligent manner and over turned and due to the impact the petitioner sustained injuries, thereby he claimed compensation.



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5. The brief facts of the counter filed by the second respondent:

The averments made in the petitioner are false. The petitioner has to put to strict proof of the averments made in the petition except those are specifically admitted by the respondents. There is no relationship between the petitioner and the first respondent as employer and employee. The petitioner has to put to strict proof of the relationship between the employer and employee and during the course of employment the accident was occurred. The driver of the first respondent has no valid license to drive the vehicle thereby the second respondent is not liable to pay compensation to the petitioner.

6. The first respondent/owner of vehicle was set exparte and not filed any counter.

7. Before the Tribunal, on the side of the petitioner they have examined P.W.1 to P.W.3 and marked exhibits Ex.P.1 to P.11 and on the side of the respondent R.W.1 and R.W.2 were examined and Ex.R.1 and R.2 were marked. Court document Ex.C.1 was also marked.



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8. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.1,57,560/- and directed the appellant/second respondent herein to deposit the amount with 12% interest.

9. As against the order passed by the Tribunal, the second respondent/Insurance company has preferred this appeal on various grounds.

10. The learned counsel appearing for the appellant would contend that there is no employer and employee relationship between the petitioner and the second respondent. The driver of the second respondent /first respondent vehicle has no valid license on the date of accident. The Tribunal has failed to consider those aspects and erroneously awarded compensation to the petitioner.

11. The learned counsel appearing for the first respondent/claimant would contend that the petitioner was working as loadman in the Annai Art Galaxy Stone workshop , Pasumalai.. The first respondent is partner of the company and the vehicle was engaged for loading and unloading stone for the company and thereby the vehicle was engaged for loading and unloading stone business purpose of Annai Art Galaxy Stone workshop , Pasumalai.. The vehicle



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was insured with the appellant/second respondent and thereby the appellant is liable to pay the amount to the petitioner.

12. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

13. In order to prove the relationship as employer and employee between the first respondent/petitioner and the second respondent/first respondent they have examined P.W.2 and he deposed about the relationship and he categorically deposed that he was working as loadman in the Annai Art Galaxy Stone workshop, Pasumalai and the first respondent is one of the partner of the company and the first respondent vehicle was used for loading stones and thereby proved the relationship of employer and employee between the petitioner and the first respondent. Moreover the first respondent who is said to be employer has not contested the case and he is the competent person to speak about the relationship of the parties but he has not appeared before the Court, thereby the evidence of P.W.2 is reliable and acceptable. In the absence of any contra evidence, the petitioner's side is not acceptable. Therefore the petitioner has proved the relationship of the employer and employee. The Tribunal has correctly discussed about the same and passed the



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impugned order, therefore this Court is of the opinion that the petitioner has proved the relationship as employer and employee.

14. The next contention raised by the appellant is that the driver of the first respondent has no valid license on the date of accident but on perusal of Ex.R.2 it is revealed that the driver of the first respondent had license to ply the Light Motor Vehicle and he had no badge to ply the commercial vehicle.

15. Even according to the insurance company the driver of the second respondent/first respondent has license to ply Light Motor Vehicle but no badge, only because of that the insurance company cannot escape from the liability. Since the first respondent was not contested, it is appropriate to order the appellant/second respondent to pay the award amount and recover the same from the first respondent. Since the petitioner is third party to the insurance company and the insurance policy is in force on the date of accident, it is appropriate to order pay and recovery. So far as quantum is concerned, there is no dispute with regard to the quantum of amount. The Tribunal has already awarded a sum of Rs. 1,57,560/-. Both the parties have not disputed with regard to the quantum of amount. Therefore this Court need not go into the aspect of quantum of amount. As discussed above this Court is of the opinion that the order passed by the Tribunal is liable to be modified.



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16. In the result, this Civil Miscellaneous Petition is a partly allowed and the order passed by the Tribunal is modified to the effect that the second respondent/Insurance Company has to pay the award amount of Rs. 1,57,560/- along with interest @ 12% per annum to the claimant within a period of 30 days from the date of receipt of this order and thereafter the second respondent can recover the same from the first respondent/Owner of the vehicle. Consequently connected miscellaneous petition is closed.

22.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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