



CMA(MD).No.409 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.06.2024

PRONOUNCED ON : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.409 of 2020
and CMP(MD).Nos.4940 of 2020 and 4365 of 2024

Divisional Manager
The Bajaj Allianz General Insurance Company Limited
No.11 (Office No.6-A)
Peoples Park 3rd Floor
Government Arts College Road
Coimbatore 64101

.....Appellant/Respondent No.2

Vs.

1.Ajeyan

...Respondent No.1/Petitioner

2.J.Saraswathi

...Respondent No.2/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, to set aside the order dated 20.08.2019 passed in E.C.No.18 of 2013 on the file of the Commissioner for Employees Compensation of Madurai insofar as liability to pay compensation on the ground of no employer-employee relationship and liability to pay the interest for the defaulted period is concerned by allowing the Civil Miscellaneous Appeal.



CMA(MD).No.409 of 2020

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For Appellant : Mr.V.Sakthivel

For R1 : Mr.P.Rengaraju

R2 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award passed by the Commissioner for Employees Compensation, Madurai in E.C.No.18 of 2013 primarily on the ground of liability.

(A)Factual Matrix:

2. According to the injured claimant, he was working as a driver under the first respondent's Minidor Van bearing Registration No.TN33-AZ-3900 and he was drawing a monthly salary of Rs.6000/- with batta. He had further contended that on 10.06.2006 at about 11.30 p.m, when he was driving the Tempo Minidor Van from Pollachi to Thiruppur, due to sudden brake failure, the Van got capsized. The claimant had further contended that in the said accident, he had sustained grievous injuries in the spinal cord and both of his kidneys were damaged. According to him, he was initially admitted to Government Hospital, Pollachi and thereafter, he was referred to Government Medical College Hospital, Coimbatore and he took treatment between



CMA(MD).No.409 of 2020

11.02.2006 to 14.02.2006 there. Later, he was admitted to a Government Hospital in Kerala and then he was admitted in Government Rajaji Hospital, Madurai from 14.08.2006 to 05.10.2006 and he underwent surgery.

3.The claimant had further contended that the accident was reported to Negamam Police Station and an F.I.R was registered in Crime No.185 of 2006 against the claimant himself. The vehicle involved in the accident was insured with the second respondent. Hence, he had prayed for a compensation of Rs.10/- lakhs.

4.After receiving notice, the owner of the vehicle had remained exparte.

5.The Insurance Company had filed a counter contending that there was no employer employee relationship between the claimant and the first respondent. They had also raised an objection with regard to the territorial jurisdiction of the Deputy Commissioner of Labour, Madurai to entertain an application for an accident that has taken place at Negamam, Coimbatore District. They have further contended that the injured claimant was not having an effective driving licence on the date of the accident. Hence, they have prayed for dismissal of the claim petition as against the insurance company.



CMA(MD).No.409 of 2020

6.The Commissioner under Workmen's Compensation Act had relied upon Exhibit P5 certificate issued by the Government Medical College Hospital, Coimbatore and Exhibit C1-medical records of Government Rajaji Hospital, Madurai and arrived at a finding that the claimant had sustained injuries due to the road traffic accident.

7.The Tribunal had further relied upon the oral and documentary evidence of Sub-Inspector of Police, Negamam Police Station to arrive at a finding that the criminal case was dropped as 'mistake of fact' on the ground that the claimant had not co-operated for the enquiry. That apart, they were not able to locate the owner of the vehicle who is arrayed as first respondent in the claim petition. The Commissioner had found that just because the police officials were not able to locate the owner of the vehicle, it cannot be said that there was no accident at all. Merely because the criminal case was closed as 'mistake of fact', the claim petition cannot be dismissed. The other records indicate that the claimant had sustained injuries due to road traffic accident and ultimately held that the claimant had sustained injuries in the course of his employment.

8.The Tribunal had further found that the claimant had entered into a mortgage deed for his residence in Madurai which is marked as Exhibit P8



CMA(MD).No.409 of 2020

and the certificate issued by Village Administrative Officer marked as Exhibit P9 to arrive at a finding that the Commissioner for Employees Compensation, Madurai is having jurisdiction to entertain the claim petition. Based upon the above said finding, a compensation of Rs.5,24,248/- was awarded. Challenging the same, the present appeal has been filed by the insurance company raising the following substantial questions of law:

“1. When the first respondent/petitioner has failed to prove the employer-employee relationship between himself and the first respondent, whether the Commissioner of Employees Compensation is right in directing the appellant insurance company to pay compensation to the first respondent/petitioner?

2. When the residence of the first respondent/petitioner was at Kerala, accident was took place at Thirupur and the appellant insurance company and the owner of the vehicle address was shown at Coimbatore, whether the Commissioner of Employees Compensation of Madurai has got jurisdiction to try the above claim at Madurai?

3. Whether the Commissioner of Employees Compensation is right in directing the appellant insurance company to pay interest at the rate of 12 percent per annum from the date of accident namely on 10.02.2006 when the main claim petition



CMA(MD).No.409 of 2020

was filed on 04.06.2012?

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4. Whether the Commissioner of Employees Compensation is right in directing the appellant to pay interest for from the date of accident at the rate of 12 percent per annum?

5. When there is no fault on the part of the appellant insurance company, whether the Commissioner of Employees compensation is right in directing to pay interest for the defaulted period of 1576 and 155 days?"

(B) Submissions of the counsels:

9. According to the learned counsel appearing for the appellant/Insurance Company, the vehicle said to have been involved in the accident has not been traced or subjected to inspection by the Motor Vehicle Inspector. The owner of the vehicle had remained exparte and there is no proof whatsoever that the claimant was working as a driver under the first respondent. When the employer-employee relationship and the involvement of the vehicle have not been proved, the Commissioner under Workmen's Compensation Act was not right in mulcting the liability upon the insurance company.

10. The learned counsel had further contended that the F.I.R was lodged after a period of five months and the said F.I.R was closed as 'mistake of fact'.



CMA(MD).No.409 of 2020

Therefore, it is clear that the involvement of the concerned vehicle has not been established by the claimant. The claimant has also not established the employer-employee relationship. He had further questioned the territorial jurisdiction of the Workmen Compensation Commissioner at Madurai to entertain such an application in view of Section 21 of Employee's Compensation Act.

11.Per contra, the learned counsel appearing for the first respondent had contended that all the medical records would clearly indicate that the claimant had suffered injuries due to road traffic accident. The delay in registering the F.I.R is only due to the fact that he was taking treatment in his native place in Kerala. He had further contended that for taking treatment in Madurai, he had taken a property on mortgage and filed the documents to the said effect. Therefore, the exercise of jurisdiction by the Commissioner of Workmen's Compensation Act, Madurai cannot be found fault with. He had further contended that the R.C. Book of the vehicle has been marked as Exhibit P2 and the insurance policy has been marked as Exhibit X2. These two documents would clearly establish that he was employed under the first respondent. Merely because the police could not trace out the first respondent, it cannot be concluded that there was no employer-employee relationship between the claimant and the first respondent. Hence, he prayed for sustaining the award passed by the Commissioner.



CMA(MD).No.409 of 2020

12.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

13.It is the specific contention of the injured claimant that he is the driver of Minidor Van bearing Registration No.TN33-AZ-3900 which is owned by the first respondent. The address of the first respondent is shown as Kangeyam Taluk, Erode District. Exhibit P2-insurance policy indicates that the address of the owner of the vehicle as Kangeyam, Erode District. The injured claimant is said to be a permanent residence of Kerala. He has not produced any record to establish the fact that he was residing at Kangeyam or nearby area and worked as a driver with the first respondent. The claimant has not able to establish any connection with Minidor Van bearing Registration No.TN-33A-3900.

14.According to the claimant, the accident has taken place on 10.02.2006 and the vehicle got capsized. The vehicle has not been traced and it has not been subjected to inspection by the Motor Vehicle Inspector. The owner of the vehicle has also not chosen to appear before the Commissioner. The F.I.R registered at the instance of the injured claimant has been closed as 'mistake of fact' on the ground that the vehicle itself is not traceable and the owner cannot be located. All these circumstances put together would clearly indicate that the claimant has not established the fact that he was employed as



CMA(MD).No.409 of 2020

a driver with the first respondent. The claimant has not even proved the involvement of the above said vehicle in the case. Merely by producing the R.C. Book and the insurance policy for the said vehicle, the claimant cannot contend that he was driving the said vehicle and employed with the first respondent.

15. Several medical records have been produced by the claimant to establish the fact that he has sustained injury by a road traffic accident only Negamam, Coimbatore District. However, it has not been established whether the said injuries were sustained by him while driving the above said vehicle or not. In such circumstances, the claimant has not established the involvement of the vehicle which is insured with the appellant and has also not established his employer-employee relationship with the first respondent in the claim petition.

16. Admittedly, the accident is said to have taken place at Negamam near Pollachi in Coimbatore District and an F.I.R has been registered only in Negamam Police Station. The owner of the vehicle alleged to be involved in the accident is residing in Kangeyam Taluk, Erode District. Therefore, only the Workmen Compensation Commissioner at Coimbatore will have territorial jurisdiction to entertain an application for compensation. The unregistered Othi deed marked as Exhibit P8 indicates that the claimant has taken a property on mortgage on 11.05.2012 which is one month prior to the



CMA(MD).No.409 of 2020

filing of the claim petition. However, the V.A.O. certificate issued under Exhibit P9 dated 13.06.2012 indicate that the injured claimant is residing at Melur Taluk, Madurai District for the past 4 years. Therefore, it is clear that these two documents have been created only for the purpose of filing the claim petition before the Commissioner of Workmen Compensation Act at Madurai.

17.In view of the above said deliberations, it is clear that the claimant has not established the involvement of the vehicle which is insured with the appellant/insurance company and has not established his employer-employee relationship with the first respondent in the claim petition. The Commissioner for Employees Compensation, Madurai has not properly appreciated the contentions of the insurance company. All the substantial questions of law are answered in favour of the appellant. Therefore, the award passed by the Commissioner for Employees Compensation, Madurai is hereby set aside and this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.07.2024

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R.VIJAYAKUMAR, J.

After pronouncing judgment, the learned counsel appearing for the appellant submits that they have deposited the entire award amount before the



CMA(MD).No.409 of 2020

Commissioner for Employees Compensation, Madurai. The Commissioner for Employees Compensation, Madurai, is directed to refund the entire award amount deposited by the Insurance Company.

01.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
ebsi/msa



CMA(MD).No.409 of 2020

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- To
1. The Commissioner for Employees Compensation
Madurai
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).No.409 of 2020

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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