



C.M.A.(MD)Nos.956 and 957 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos. 956 and 957 of 2010
and M.P(MD)Nos.2 and 2 of 2010

In C.M.A(MD) No.956 of 2010:

Branch Manager,
National Insurance Co.Ltd.,
Sriram Chits Office,
2.A, Pragasam Road,
T.Nagar, Chennai – 17.

... 2nd Respondent/Appellant

Vs.

1.S.Arul
2.T.Saravana Kumar

..1st Respondent/Claimant
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under 30 of Workmen Compensation Act against the order passed in W.C.No.161 of 2005 dated 18.04.2005 on the file of the Commissioner for Workmen Compensation (Deputy Commission of Labour), Dindigul.

In C.M.A(MD) No.957 of 2010:

Branch Manager,
National Insurance Co.Ltd.,
Sriram Chits Office,
2.A, Pragasam Road,
T.Nagar, Chennai – 17.

... 2nd Respondent/Appellant

Vs.

1.V.Umapathi
2.T.Saravana Kumar

..1st Respondent/Claimant
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under 30 of Workmen Compensation Act against the order passed in W.C.No.162 of 2005 dated 18.04.2005 on the file of the Commissioner for Workmen Compensation (Deputy Commission of Labour), Dindigul.



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In both Appeals:

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

COMMON JUDGMENT

The instant appeals were filed challenging the awards passed by the Commissioner for Workmen Compensation (Deputy Commission of Labour), Dindigul, in the claim petitions filed by two workmen, who have suffered injuries in the same accident.

2. The claimants stated before the Commissioner that they were working as Loadmen and during the course of employment, on 15.04.2005 at about 4.15 a.m, they were travelling in a Van and when they parked the Van in a public road, a Lorry came in the opposite direction and dashed against the Van, as a result of which, both of them sustained injuries.

3. The appellant Insurance Company/2nd respondent before the Commissioner, under whom the claimants were employed, filed a counter denying the averments in the claim petitions and in any case, they are not liable to pay compensation. It was further stated in the counter that the averments in the claim petitions were false; that the Workmen had not



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established their relationship with the employer; and that in any case, the compensation claimed was excessive.

4. Before the Commissioner, the claimants examined themselves as P.W.1 in their respective claim petitions and examined the Doctor as P.W.2 and marked Ex.P.1 to Ex.P.8.

5. The Commissioner, after taking into consideration the oral and documentary evidence, held that the claimants had established that they had suffered injuries during the course of employment; that they were working under the 2nd respondent herein; that the 2nd respondent had an employer relationship with the claimants and that therefore, the appellant was liable to pay compensation for the injuries suffered by them.

6. In respect of the claim, which is subject matter in C.M.A(MD) No.956 of 2010, the claimant was awarded a sum of Rs.73,042/- by determining the loss of earning capacity at 15%. In respect of the claimant in C.M.A(MD)No.957 of 2010, the claimant was awarded a sum of Rs.72,274/- after determining the loss of earning capacity at 15%.



7. This Court admitted the instant appeals on the following substantial question of law:

“Whether the Commissioner for Workmen's Compensation has power to assess the loss of earning capacity when the claimant sustained a non-schedule injury and when the same is not permissible under Section 4(1)(c)(ii) of Workmen's Compensation Act, 1923?”

8. The learned counsel for the appellant submitted that the injuries suffered by the claimants were not specified in Schedule-I; that unless the loss of earning capacity is established, the Commissioner cannot award compensation under the Workmen's Compensation Act; and that the medical evidence produced on the side of the claimants did not suggest that the claimants suffered the loss of earning capacity.

9. Both the appeals were dismissed as against the claimants/first respondent by the order dated 29.11.2017 since the appellant has not paid batta and complied with the defects pointed out by the Registry within a stipulated time.

10. Though the 2nd respondent in both the claim petitions has been



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served and the name is printed in the cause list, none entered appearance.

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11. This Court gave its anxious consideration to the submissions made by the learned counsel for the appellant Insurance Company.

12. Section 4(1) (c) (ii) of the Workmen's Compensation Act, 1923, provided that compensation can be awarded if the injury is either specified in Schedule-I or the injury has caused loss of earning capacity. The claimants in both the appeals have produced the disability certificate marked as Ex.P.7 in both the claim petitions, which was issued by the Doctor attached to the Government Hospital. The Doctor had assessed that the disability is permanent and that the percentage of disability was 15%. The claimants in both cases were admittedly working as loadmen. The nature of the injuries suffered by them as recorded from the medical evidence and the avocation of the claimants as load man, which involves physical labour suggest that they had suffered loss of earning capacity. Therefore, this Court is of the view that the award of the Commissioner holding that the appellant Insurance Company is liable to pay compensation is justified and there is no reason to interfere with the said finding. The substantial question of law is answered against the appellant accordingly. Hence, the orders passed in W.C.Nos.161 and 162 of 2005



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dated 18.04.2005 on the file of the Commissioner for Workmen's Compensation (Deputy Commission of Labour), Dindigul, are confirmed.

13. In fine, these appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Commissioner for Workmen Compensation
(Deputy Commission of Labour), Dindigul.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)Nos. 956 and 957 of 2010
and M.P(MD)Nos.2 and 2 of 2010

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