



C.M.A(MD)No.634 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.634 of 2013

and

M.P.(MD)No.1 of 2013

Divisional Manager,
M/s.United India Insurance Company Limited,
No.457, V.E.Road,
Tuticorin Taluk.

... Appellant

Vs.

1. Dhanapal

2. Hari & Company,
Great Cotton Road,
Tuticorin.

3. M/s.Krishna and Company,
V.E.Road,
Tuticorin.

4.Muthusamy (Driver),
M/s.Krishna and Company,
V.E.Road,
Tuticorin.

5.S.V.Kandaraj

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 28.09.2012 made in W.C.No.7 of 2008, on the file of the Commissioner of Workmen's Compensation, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.D.Srinivasa Ragavan
For R3 : Mr.R.J.Karthick
For R2, R4 & R5 : No Appearance

JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of injury. The claimant is an employee under Hari and Company. The 3rd respondent M/s.Krishna and Company had hired the crane from the owner / 5th respondent namely Kandaraj. The 4th respondent is the Driver of the Crane. The contention of the Insurance Company is that since the injured claimant is an employee under Hari and Company, there is no employer employee relationship with M/s.Krishna and Company and Kandaraj. Therefore, the Insurance Company is not liable to pay the compensation.

3. The nature of accident is that the crane was used for transporting heavy



load in Thoothukudi port. While carrying heavy load, the chain in the crane was cut and the heavy load fell on the claimant. On seeing the nature of the accident, this Court is of the considered opinion that M/s.Krishna and Company and Kandaraj cannot wriggle out of their liability. Even though the contention of the Insurance Company that there is no employer employee relationship is convincing, on seeing the nature of the accident, this Court is coming to the conclusion that 50% liability ought to be fixed on M/s.Krishna and Company and Kandaraj since the accident occurred due to the negligence of the said owner of the crane where they have not maintained the crane properly. Had the chain was maintained properly the chain would not cut and the load would not have fell on the victim. The balance 50% ought to be fixed on Hari and Company, since Hari and Company is the employer of the claimant.

4. It is submitted that the appellant Insurance Company has deposited the entire award amount (Rs.2,54,389/-). The Insurance Company is liable to pay 50% (Rs.1,27,194.5/-) of the compensation and the Insurance Company is entitled to recover the balance 50% (Rs.1,27,194.5/-) from Hari and Company. There is an interim order passed by this Court, dated 26.03.2013, directing the Deputy Commissioner of Labour not to disburse the deposited amount. Therefore, based



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on this order, the Deputy Commissioner is directed to disburse the entire deposited amount along with accrued interest therein, if any, to the claimant.

5.The claimant shall withdraw the entire award amount deposited by the Insurance Company. The Insurance Company shall recover 50% of the award amount from Hari and Company as stated supra.

6.With the above said observations, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.06.2024

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

Tmg



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To:

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- 1.The Commissioner of Workmens' Compensation,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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