



S.A(MDNo.379 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.379 of 2011

and

M.P(MD)Nos.1 of 2011 and 1 of 2012

Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Rep.by its Divisional Manager

...Appellant

-Vs-

1.P.Abdul Samad (died)

2.The Christian Mission Hospital,
Through its Medical Superintendent,
Christian Mission Hospital,
East Veli Street,
Madurai-1.

3.Jamila Beevi

4.Seeni Rashim Prasth

5.Abdul Kareem

6.Abbas

7.Syed Hakkim

... Respondents



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.69 of 2010, on the file of the learned II Additional Subordinate Judge, Madurai, dated 18.01.2011, confirming the judgment and decree passed in O.S.No.965 of 2004 on the file of the learned Principal District Munsif, Madurai, dated 01.02.2007.

For Appellants : Mr.N.Rahamadullah

For R3 to R7 : Mr.S.Ramesh

For R2 : No appearance

JUDGMENT

The second defendant in the suit is the appellant. The first respondent herein filed a suit seeking recovery of a sum of Rs.40,278.75/- with interest from the appellant towards the medical expenses incurred by the first respondent in getting treatment in the second respondent hospital. The said suit was decreed as against the appellant/second defendant by the trial Court and the findings of the trial Court were confirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellant/second defendant is before this Court.



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2. The first respondent was employed as a driver in the appellant Corporation. During the course of his employment, he suffered an injury and hence, he got admitted in the second respondent hospital. As per the scheme of the appellant corporation, the appellant is liable to pay the costs incurred for treating his employees. As per the terms of contract between the appellant and second respondent, the second respondent hospital has to treat the employees of the appellant without charging any amount. The first respondent got admitted in the second respondent hospital on 04.01.2000 for taking treatment for the injuries suffered during the course of his employment. The second respondent hospital treated the first respondent on condition that the first respondent should pay the cost of treatment expenses and the same will be repaid to him as soon as the payment is received from the appellant. It was further averred by the first respondent that he has spent a sum of Rs.51,720/- towards cost of treatment and at the time of discharge, the second respondent paid a sum of Rs.11,441.25/-. The balance amount payable to the first respondent was Rs.40,278.75/-. When the first respondent demanded the payment by writing a letter, the second respondent made an endorsement in that letter on 11.12.2000 acknowledging the liability. Even thereafter, the appellant and the second respondent failed to pay the amount



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due to the first respondent inspite of demand notice and hence, the present suit was laid for recovery of money.

3. The appellant herein failed to file any written statement and remained *ex parte*. The second respondent alone contested the suit by filing a written statement.

4. Before the trial Court, the first respondent/plaintiff was examined as P.W1 and five documents were marked on his side as Ex.A1 to Ex.A5. On the side of the defendants, no oral and documentary evidence were let in.

5. The trial Court, on appreciation of evidence available on record, came to the conclusion that as per the scheme, the appellant corporation was liable to pay the suit amount to the first respondent. The trial Court also came to the conclusion that since there was no evidence available on record to show that the appellant herein paid amount to the second respondent, there cannot be a decree against the second respondent. Hence, the suit was dismissed as against the second respondent and decree was passed against the appellant as prayed for. Aggrieved



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by the same, the appellant preferred an appeal in A.S.No.69 of 2010 on the file of the II Additional Sub Court, Madurai. Before the first appellate Court, it was argued by the appellant that the first respondent initiated separate proceedings under Workmen Compensation Act and an award was passed in his favour for a sum of Rs.66,782/- and hence, the present suit laid for recovery of money based on the very same cause of action, was not maintainable. However, the alleged award passed in favor of the first respondent in the proceedings initiated under Workmen Compensation Act was not marked before the first appellate Court. After re-appreciating the evidence available on records, the first appellate Court came to the conclusion that the appellant was liable to pay the amount to the first respondent. Aggrieved by the same, the appellant is before this Court.

6. The learned counsel appearing for the appellant submitted that the accident had taken place on 30.12.2000 and the present suit was laid only on 10.11.2003 after expiry of three years. Therefore, the suit is barred by limitation. The learned counsel further submitted that having received compensation under Workmen Compensation Act, the first respondent is not entitled to maintain the suit for recovery of medical expenses.



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7. As far as the question of limitation raised by the learned counsel for the appellant is concerned, the Courts below based on the endorsement found in Ex.A2 dated 11.12.2000, came to the conclusion that the suit was filed within three years from the date of endorsement and hence, the suit was not barred by limitation. Ex.A1 is a letter written by the first respondent to the second respondent requesting them to repay the suit amount. In the backside of the Ex.A1, there was an endorsement by the employee of the second respondent acknowledging the amount spent by the first respondent towards medicine from outside for treatment. Since the suit is laid within three years from the date of acknowledgment of liability, both the Courts below rightly came to the conclusion that the suit was not barred by limitation. Hence, the first contention raised by the learned counsel for the appellant is rejected.

8. As far as the second contention is concerned, the copy of the award passed under Workmen Compensation Act has not been marked as exhibit before the Courts below. In the absence of any evidence to show that the compensation was paid to the first respondent under an award passed under the Workmen Compensation Act for the medical expenses incurred by the first respondent, the



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contention raised by the appellant cannot be accepted. Therefore, finding no substantial question of law to interfere with the concurrent findings rendered by the Courts below, the Second Appeal is dismissed.

9. 11. In nutshell,

(i)The Second Appeal is dismissed by confirming the judgment and decree, dated 18.01.2011, made in A.S.No.69 of 2010, on the file of IInd Additional Sub Court, Madurai, confirming the decree and judgment of the Principal District Munsif Court, Madurai, in O.S.No.965 of 2004, dated 01.02.2007;

(ii) In the facts and circumstances, there will be no order as to costs; and

(iii) Connected miscellaneous petitions are closed.

10.04.2024

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

- 1.The IInd Additional Subordinate Judge,
Madurai.
- 2.The Principal District Munsif,
Madurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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