



C.M.A(MD)No.286 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.286 of 2019
and
Cros. Objection(MD)No.25 of 2024
and
C.M.P(MD)No.3868 of 2019

C.M.A(MD)No.286 of 2019:

The Divisional Manager,
United India Insurance Company Limited,
Puthussery Complex,
Government Hospital Junction,
Aluva Taluk,
Ernakulam District.

... Appellant/2nd Respondent

Vs.

1.A.Sudarson

... 1st Respondent/Petitioner

2.Geetha

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, to enhance the quantum of compensation amount awarded in W.C.No.39 of 2014 on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour), Dindigul, dated 13.11.2018 and allow the present Cross Appeal.



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For Appellant : Mr.G.Prabhu Rajadurai

For R-1 : Mr.M.Saravanan

For R-2 : Mr.N.C.Ashok Kumar

Cros. Objection(MD)No.25 of 2024:

A.Sudarson ... Cross Appellant/1st Respondent

Vs.

1.The Divisional Manager,
United India Insurance Company Limited,
Puthuserry Complex,
Government Hospital Junction,
Aluva Taluk,
Ernakulam District.

... 1st Respondent/Appellant

2.Geetha ... 2nd Respondent/2nd Respondent

PRAYER: Cross Objection is filed under Order XLI, Rule 22 r/w Section 96(1) & (2) of Civil Procedure Code, to enhance the quantum of compensation amount awarded in W.C.No.39 of 2014 on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour), Dindigul, dated 13.11.2018 and allow the present Cross Appeal.

For Cross Objector : Mr.M.Saravanan

For R-1 : Mr.G.Prabhu Rajadurai

For R-2 : Mr.N.C.Ashok Kumar



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COMMON JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in W.C.No.39 of 2014 on the file of the Workmen's Compensation Commissioner / Deputy Commissioner for Labour, Dindigul, challenging the employer employee relationship.

2. According to the injured claimant, he was working as a driver under the first respondent and while he was driving the vehicle on 19.04.2012, he had dashed against a tree and he had sustained injuries. Hence, he had prayed for a sum of Rs.10,00,000/- as compensation.

3. The Insurance Company has filed a counter contending that the claimant alone has driven the vehicle in a rash and negligent manner and he had sustained only simple injuries. It was further contended that the vehicle was already sold by the first respondent in favour of one Chandran even before the accident. The said Chandran is none other than the brother-in-law of the claimant. Therefore, there is no employer employee relationship between the petitioner and the first respondent in



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the claim petition. Hence, they have prayed for exoneration of the Insurance Company.

4. The Tribunal after considering the oral and documentary evidence on either side has arrived at a finding that, this first respondent in the claim petition is the owner of the vehicle and there is employer employee relationship between the claimant and the first respondent. The Tribunal has further arrived at a finding that the claimant is entitled to a compensation of Rs.8,35,386/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. The following substantial questions of law have been raised in the appeal by the Insurance Company:

"1. Whether the finding of the Commissioner regarding the existence of the Employer employee relationship is perverse in the light of the admission of the second respondent she sold the vehicle through their husband?"

2. Whether the non consideration of the statement made in the FIR and 161 statement regarding the ownership of Chandran and his relationship with the injured is perverse and bad in law



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particularly when such document was prepared immediately after the accident?"

6. The learned Counsel appearing for the appellant had contended that the vehicle has been sold by the first respondent in favour of one Chandran even before the accident. The said Chandran is none other than the brother-in-law of the claimant. The deposition of P.W.1 and P.W.3 would clearly indicate the said fact. The Commissioner has not properly appreciated the oral evidence. Hence, he prayed for allowing the appeal.

7. Per contra, the learned Counsel appearing for the respondent herein had contended that the first respondent is the registered owner of the vehicle on the date of the accident. She has been examined as P.W.4 on the side of the claimants and she has confirmed that the claimant is the driver on the date of the accident. In such circumstances, the claimant has established that there is employer employee relationship between the first respondent and the claimant. It is also not in dispute that the accident has taken place in the course of employment. Hence, he prayed for dismissal of the appeal.



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8. I have carefully considered the submissions made on either side and perused the materials available on record.

9. The one and only contention raised on the side of the Insurance Company is that the vehicle had been sold by the first respondent in favour of one Chandran before the date of accident and therefore, there is no employer employee relationship between the first respondent and the claimant. However, no-one has been examined to the said effect or any document has been filed to establish the fact that the vehicle was sold by the first respondent prior to the date of accident. In fact, the first respondent had been examined as P.W.4 and she has categorically stated that she has not sold the vehicle on the date of the accident and the claimant is her driver on the date of the accident. Though she has deposed that she is not aware to whom the vehicle was sold by her husband, the date of sale has not been brought on record by the Insurance Company. Therefore, I am of the considered opinion that on the date of the accident, the first respondent was the vehicle owner and the claimant was working as a driver under the first respondent. In such circumstances, merely because one Chandran has lodged a complaint before the police authorities, it cannot be said that there is no employer



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employee relationship. Even in the FIR lodged by the said Chandran, there is no reference about the fact that he has become the owner of the vehicle. Therefore, there is no merits in the appeal and the appeal stands dismissed.

10. The cross objection has been filed by the claimant seeking enhancement of the compensation. A perusal of the claim petition indicates that the claimant has contended that he was receiving a salary of Rs.8,500/- from the first respondent. The first respondent has been examined as P.W.4. In her evidence, she has stated that she was paying Rs.8,000/- as salary and another Rs.1000/- as batta per month. The Commissioner has relied upon the Minimum Wages Act and fixed the wages at Rs.6,784/-.

11. I am of the considered opinion that the Commissioner was not right in fixing the minimum wages when the employer herself has entered into the box and said that she is paying a salary of Rs.8,000/-.

12. In view of the above said deliberations, the compensation amount is re-assessed as follows:



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S.No.	Heads	Compensation
01.	Loss of Earning capacity 60/100 X 8000 X 172.52 X 52/100	Rs.4,30,609.92/-
02.	Medical Expenses	Rs.4,70,229/-
	Total	Rs.9,00,838.92/-
	Rounded off	Rs.9,00,839/-

13. The award of the Commissioner is enhanced from Rs.8,35,386/- (Rupees Eight Lakhs Thirty Five Thousand Three Hundred and Eighty Six only) to **Rs.9,00,839/- (Rupees Nine Lakhs Eight Hundred and Thirty Nine only)**. The Insurance Company shall deposit the enhanced award amount within a period of twelve (12) weeks from the date of receipt of a copy of the judgment along with interest as levied by the Commissioner. The claimants have filed the cross objection with a huge delay of 1700 days. Therefore, they shall not be entitled to interest for the period between 01.02.2019 and 28.02.2024.

14. In fine, the Cross objection is partly allowed and the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

04.07.2024



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

To

1.The Workmen's Compensation Commissioner
(Deputy Commissioner of Labour),
Dindigul.

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



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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