



C.M.A.(MD).No.1173 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.07.2024

DELIVERED ON : 25.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.1173 of 2021
and C.M.P.(MD).No.11297 of 2021

The Manager,
Cholamandalam General Insurance Company Limited,
Dare House 2nd Floor,
NSC Bose Road,
Chennai – 600 001. ... Appellant/2nd Respondent

Vs.

1.Dhanush @ Dhanuskodi ... 1st Respondent/Petitioner
2.Ramadoss ... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 30(1) of Employees Compensation Act, 1923), to set aside the judgment and decree dated 13.11.2018 made in W.C.No.118 of 2011 on the file of the Deputy Commissioner of Labour, Commissioner for Employee's Compensation, Trichy.

For Appellant : Mrs.K.R.Shiva Shankari

For Respondents : No Appearance



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JUDGMENT

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This appeal has been directed against the judgment and decree dated 13.11.2018 made in W.C.No.118 of 2011 on the file of the Deputy Commissioner of Labour, Commissioner for Employee's Compensation, Trichy.

2.The facts in brief:

On 22.01.2011 at about 9.30 p.m., the petitioner was travelling in the vehicle bearing registration No.TN 49 AA 0907 as a cleaner and after loading the articles, they were travelling towards Thanjavur. The driver of the load auto driven the same in rash and negligent manner and hit another vehicle which was coming in the opposite direction bearing registration No.TN 57 U 4884. The claimants suffered serious and severe injuries, taken to Government Medical College Hospital, Thanjavur and took treatment from 21.03.2011 to 19.03.2011, where he underwent surgery. At the time of the accident he was getting Rs.6,000/- as salary. Because of the accidental injuries, he could not continue his work as before. Claiming compensation of Rs.5,00,000/- he moved the commissioner of labour.



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3.That was resisted by the insurance company, since the first respondent namely the owner of the vehicle remained exparte, denying that it is the duty of the claimant to prove that the first respondent is not followed any policy conditions. There was no employer and employee relationship between the claimant and the first respondent. Even as per the FIR it is stated that the claimant was travelling as a gratuitous passenger in the goods vehicle. 4 persons were travelled in the cabin. There is no coverage for the load man and the employees.

4.The commissioner recorded a finding with regard to the relationship between the claimant and the first respondent that it stands established.

5.Regarding the compensation amount the monthly salary was taken as Rs.6,401/- and to that the relevant factor was 205.95. The disability was assessed at 58%. The following calculation was made and the total compensation of Rs.3,95,486/- was awarded. $(60/100 \times 6401 \times 205.95 \times 50/100 = \text{Rs.}3,95,486/-)$



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6.Regarding liability, it recorded a finding that it was admitted by the Insurance Company that it is a package policy. Even if the vehicle sold to a third party, the insurance company cannot disown the responsibility. On that ground, the award was passed. Against which this appeal is preferred by the insurance company. The learned counsel for the appellant would submit that there was no employer and employee relationship between the claimant and the first respondent. He came as a helper on this vehicle and so he cannot be construed as a cleaner. The vehicle was purchased on 05.01.2011 and occurrence took place on 22.01.2011. So there was no coverage on the date of occurrence.

7.The claimant did not appear before this Court in spite of repeated notice. So name was printed in the cause list. So also the owner of the vehicle.

8.Since the employer and employee relationship is disputed, this Court has to assess the evidence on record. No documentary evidence was produced by the claimant to show the relationship. Soon after the occurrence, complaint was lodged by one Karthick, wherein, it has been



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stated that one Prakash was the driver in a Courier service van, one Balu was assisting Prakash. On 21.01.2011, he was requested by Prakash for loading the goods. Along with him, Danush, Rajesh and Suresh also came and travelled in the vehicle. At that time, the occurrence took place. By pointing out this it is contended on behalf of the appellant that only he is casual labour. The claimant travelled in the vehicle and so he cannot be construed as employee under the first respondent. As mentioned above, there is no clear evidence on the side of the claimant that he was working as a cleaner in the vehicle belongs to the first respondent. The author of the complaint was not examined as a witness before the Commissioner. So in the absence of any clear evidence on record to show that the claimant was a cleaner in the vehicle, the finding of the commissioner that relationship stand established is without proper evidence.

9.Now we will see whether there is any coverage for the load man for the vehicle. It is admitted by the appellant himself before the Commissioner that it is a package policy. There is no coverage for the load man. Only third party premium, and legal liability to the paid driver,



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personal accident coverage for owner cum driver are paid. Since the claimant is not covered in the policy, the insurance company cannot be held liable. Only the owner of the vehicle is liable to pay compensation, if any, to the claimant. So the order passed by the Commissioner is modified to the effect that the first respondent in the main petition is ordered to pay the entire award to the petitioner. The appellant is exonerated from the liability. The award of compensation passed by the Commissioner is hereby modified.

10. Accordingly, this appeal is allowed. The award passed by the Commissioner is hereby partly modified. The Insurance Company is exonerated from the liability to pay the above said compensation. The first respondent in the main petition is directed to pay the award amount passed by the Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2024

Index : Yes / No
Internet : Yes / No
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To

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- 1.The Deputy Commissioner of Labour, Commissioner for Employee's Compensation, Trichy.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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