



C.M.A.(MD)No.1253 of 2014

WEB COPY

Dated: 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1253 of 2014

and

M.P(MD) No.3 of 2014

National Insurance Company Limited
Rajapalayam

.. Appellant/2nd Respondent

Vs.

1. Anantharaj
2. Management
Rajasekaran Textiles
Chatrapatti Village
Rajapalayam Taluk,
Melur, Shencottai

...1st Respondent/Petitioner

..2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award dated 30.03.2012 made in W.C. No.83 of 2009 on the file of the Commissioner of Workmen Compensation(Deputy Commissioner of Labour) Tirunelveli.

For Appellant : Mr.J.S.Muruali

For R-1 : Batta Due

For R-2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C. No.83 of 2009 on the file of the



C.M.A.(MD)No.1253 of 2014

Commissioner of Workmen Compensation(Deputy Commissioner of Labour) Tirunelveli, wherein the first respondent herein has filed petition before the Deputy Commissioner of Labour, Tirunelveli claiming compensation that he was working as driver under the first respondent and while he was in the course of employment he sustained injuries.

2. The Deputy Commissioner of Labour has awarded a sum of Rs.1,16,251/-towards compensation by directing the second respondent/Insurance company to pay the said amount. As against the said order the present appeal has been filed by the second respondent/Insurance company.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

4. The case of the petitioner before the Tribunal is that he was working as driver under the first respondent vehicle TN 67 Q 4142 and earning a sum of Rs.4,500/- per month. On 01.10.2003 as per the instructions of the first respondent he was proceeding in the first respondent vehicle near Bhavani- Mayildambadi, by taking milk



C.M.A.(MD)No.1253 of 2014

products. At that time near Dindigul- Madurai main road he dashed against the vehicle which was proceedings in front of the vehicle of the first respondent. Immediately he was taken to Dindigul City Hospital and his left leg was subjected for surgery, thereby he permanently disabled. Hence he claimed compensation.

5. The brief averments of the counter filed by the first respondent are as follows:

The accident dated 01.10.2003 is admitted. The relationship is also admitted. The age, disability is not admitted. At the same time, the first respondent vehicle was insured with the second respondent and thereby the second respondent is liable to pay compensation to the petitioner.

6. The brief averments of the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts and the petition is liable to be dismissed in *limine*. The relationship of the parties and the monthly income of the petitioner are all denied. The manner of accident, injuries sustained by the petitioner are



C.M.A.(MD)No.1253 of 2014

denied. The petitioner was engaged in duty of Amutham dairy products and not working under the Rajasekar textiles. The petitioner himself invited the accident due to his own negligence, therefore the respondent is not liable to pay any compensation, hence the petition is liable to be dismissed.

7. Before the Tribunal, on the side of the petitioner they have examined P.W.1 and P.W. 2 and marked exhibits Exs P.1 to P10 and on the side of the respondent R.W.1 was examined and one document was marked as Ex.R.1.

8. After analyzing the evidence adduced by both parties, the Tribunal has awarded a sum of Rs.1,16,251/- towards compensation to the petitioner. As against the liability the second respondent /Insurance company has filed the present appeal on various grounds.

9. The learned counsel appearing for the appellant would contend that the petitioner was working as driver for the Amutham dairy products and not under the first respondent/petitioner. Therefore there is no relationship between the first respondent and the petitioner as employer and employee. Further the petitioner



C.M.A.(MD)No.1253 of 2014

failed to prove his employment and employer and employee relationship between the parties and the Tribunal failed to consider the same and awarded compensation. Therefore the award passed by the Tribunal is liable to be set aside.

10. In this appeal after receipt of notice respondent did not appear. Though name printed in the cause list, none appeared on behalf of the respondents.

11. Hence this Court has heard the petitioner side and perused the records.

12. Upon hearing petitioner side the following substantial question of law would arise

i) Whether the insurance company can be mulcted with the liability when there is no employer employee relationship between the owner of the vehicle and the claimant?

13. In this case the petition was filed before the Deputy Commissioner of Labour, Tirunelveli alleging that the first respondent/petitioner herein sustained injuries and while he was working under the employment of the first respondent vehicle. The



C.M.A.(MD)No.1253 of 2014

first respondent vehicle was insured with the second respondent on the date of accident. The insurance company disputed that the first respondent/petitioner was not working under the first respondent and he was working under the Amutham dairy and thereby there is no relationship between the petitioner and the first respondent as employer and employee. In this context, the petitioner himself in the proof affidavit categorically stated that he was working under the first respondent as driver on the date of accident and as per the direction of the first respondent he had driven the vehicle by loading milk products from Bhavani to Mayildambadi and at that time he met with the accident in the Madurai- Dindigul main road. Therefore from the evidence of the first respondent/petitioner it is clear that he was working under the first respondent vehicle as driver. While he was working in the vehicle he met with the accident. Therefore the evidence clearly shows the relationship between the first respondent/petitioner and the second respondent/first respondent as employer and employee. The second respondent/first respondent also filed counter before the Deputy Commissioner of Labour that he admitted that the petitioner was working under him as employee and he was driver of the first respondent vehicle. Therefore the competent person to speak about the relationship as employer and employee is second



C.M.A. (MD) No. 1253 of 2014

respondent/first respondent. Therefore the owner of the vehicle who is the second respondent/first respondent himself admitted the relationship. Therefore the petitioner has proved his relationship as employer and employee and there is no dispute that the first respondent vehicle was insured with the second respondent on the date of accident, thereby the insurance company can be mulcted with the liability when there is a relationship as employer and employee between the owner of the vehicle and the petitioner, thus the substantial question of law is answered.

14. According to the appellant/second respondent the petitioner was working under Amutham dairy and there is no evidence that he was working under Amutham dairy. The first respondent/petitioner and the second respondent/first respondent both have categorically stated that the claimant was working under the first respondent on the date of accident and he was taking a goods from Amutham dairy and no where in the evidence stated about the first respondent/petitioner was working under the Amutham dairy. Therefore the contention of the learned counsel appearing for the appellant is not acceptable and the first respondent/petitioner has proved that he was working under the second respondent/first respondent.



C.M.A.(MD)No.1253 of 2014

WEB COPY

15. Therefore in view of the answers made to the substantial question of law, the present appeal has no merits and deserves to be dismissed.

16. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

11.03.2024

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

To:

1. The Deputy Commissioner of Labour
(Workmen's Compensation)Tirunelveli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1253 of 2014

P. DHANABAL,J.

aav

C.M.A.(MD)No.1253 of 2014

11.03.2024