



C.M.A(MD)No.478 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 12.01.2024

CORAM:

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

C.M.A(MD)No.478 of 2014

and

M.P(MD)No.2 of 2014

The Branch Manager,
The New India Assurance Company Limited,
No.66, West Boulevard Road,
Trichy-620 008.

... Appellant/2nd Respondent

Vs.

1.S.Nanda Kumar

... 1st Respondent/Petitioner

2.K.Sumesh

... 2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30(1) of the Workmen Compensation Act VIII of 1923, against the award, dated 21.10.2013 made in W.C.No.94 of 2012 on the file of the Commissioner of Workmen's Compensation, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

For R-1 : Mr.N.Sudhagar Nagaraj

For R-2 : No appearance



C.M.A(MD)No.478 of 2014

WEB COPY

JUDGMENT

The present Civil Miscellaneous Appeal has been preferred as against the order passed in W.C.No.94 of 2012 on the file of the Commissioner for Workmen's Compensation, Tiruchirappalli, wherein, the first respondent herein has filed a petition for compensation under the provisions of Workmen's Compensation Act claiming a sum of Rs.5,00,000/- and the Tribunal has awarded a sum of Rs.4,63,016/- towards compensation. As against the order passed by the Tribunal, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

2. The brief facts of the case of the petitioner before the Tribunal are that the petitioner was working as a driver under the first respondent. While so, on 02.04.2012, when the petitioner was driving the vehicle bearing Registration No.TN 48 L 2632 belonging to the first respondent insured with the second respondent near Mangamma Nagar Road, in order to avoid the vehicle to fall in a pit, he had suddenly applied the brake and turned the vehicle. At the time, the vehicle over turned and fell into the pit.



C.M.A(MD)No.478 of 2014

WEB COPY

Due to that accident, he sustained injuries all over the body and thereafter, he was taken to hospital. He had taken treatment from 03.04.2012 to 07.04.2012 as in-patient and he was aged about 31 years on the date of accident. At the time of accident, he was earning about a sum of Rs.8,000/- and also got Rs.100/- per day towards batta. The accident was occurred during the course of employment under the first respondent employer. Since the first respondent vehicle is insured with the second respondent, both the respondents are liable to pay compensation to the petitioner.

3. The first respondent had filed a counter stating that the petition is not maintainable in law and he admitted that the petitioner was working as a driver on his vehicle and he denied the income and the batta and he do not know about the manner of accident and the injury sustained by the petitioner. At the time of accident, the first respondent vehicle was insured with the second respondent and if any compensation, the second respondent has to pay to the petitioner.

4. Brief averments of the counter filed by the second respondent are as follows:



C.M.A(MD)No.478 of 2014

WEB COPY

The petition is not maintainable either in law or facts. Hence, liable to be dismissed. The petitioners are not sustained injury during the course of employment under the first respondent and no any claim petition filed by the first respondent. On the date of accident, there is no policy was in force and the respondent denied the age, income, occupation and injury sustained by the petitioner. On the date of accident, the petitioner has no valid license. Therefore, the petition is liable to be dismissed.

5. In order to prove the case of the petitioner, the petitioner had examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.13 and on the side of the respondents, R.W.1 was examined and marked Exhibits R.1 to R.3.

6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.4,65,016/- and directed the second respondent / Insurance Company to pay the above said amount within thirty days.



C.M.A(MD)No.478 of 2014

WEB COPY

7. Aggrieved by the order passed by the Tribunal, the second respondent / Insurance Company has preferred this appeal on various grounds.

8. The learned Counsel appearing for the appellant would contend that the petitioner has no valid license to drive the first respondent vehicle at the time of accident. The first respondent vehicle is a passenger carrying commercial vehicle and Transport endorsement with badges is pre-requisite condition to drive the above said vehicle. The appellant has examined as R.W.1 and also marked Exhibits R.1 to R.3 and the Tribunal has failed to consider the above said evidence of R.W.1 and Exhibits R.1 to R.3 and the Tribunal has erroneously awarded the award amount without exonerating the Insurance Company. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned Counsel appearing for the first respondent would contend that on the date of accident, the first respondent vehicle was insured with the second respondent and the driver of the first respondent also has valid license to drive the light motor vehicle and the first



C.M.A(MD)No.478 of 2014

respondent also admitted that the petitioner was working under the first respondent as a driver and thereby, the Tribunal after taking into consideration of all the aspects, correctly applied the law and awarded a fair compensation. Hence, the appeal is liable to be dismissed.

10. This Court after hearing both sides, perused the documents including the order of the Tribunal. This Court at the time of admission framed the following substantial question of law:

"i) Whether non framing of specific issue with regard to non availability of valid and effective driving licence vitiates the award of the learned Commissioner when the appellant insurance company herein has specifically denied their liability in the counter statement filed before the learned Commissioner?

ii) Whether the "LMV license" is sufficient to drive the passenger carrying commercial vehicle like Auto rickshaw or Transport endorsement with badge is a pre-requisite condition to drive such vehicle?

iii) Whether the provisions of Section 49 of the Motor Vehicles Act, 1988, is applicable when the petitioner claims the award under the Workmen Compensation Act, 1923?



C.M.A(MD)No.478 of 2014

WEB COPY

iv) Whether the appellant insurance company is liable to indemnify for the insured under Workmen's Compensation Act when the insured has violated the policy conditions?"

11. In this case, there is no dispute that the petitioner was under the employment of first respondent and also there is no dispute that the first respondent vehicle was insured with the second respondent Insurance Company on the date of occurrence. The only contention of the appellant is that the petitioner has no valid license on the date of accident and the Tribunal has not framed specific issue. The Appellant / second respondent had taken place that the driver of vehicle had no valid license to drive the vehicle and no badge endorsement. But the Tribunal has not framed specific issue, but in the order elaborately discussed about the place taken by the Appellant / second respondent and answered the mere possession of license of LMV is sufficient to drive the Transport Vehicle of LMV and no badge is required and also relied on the judgment of the Hon'ble Supreme Court. Though there is no specific point framed by the Tribunal it had discussed the crux of the matter in issue. Therefore, non framing of specific issue with regard to non availability of valid and effective license



C.M.A(MD)No.478 of 2014

does not vitiate the award. On perusal of records shows the petitioner has produced the license of the petitioner as Exhibit P.5 and on perusal of Exhibit P.5 would reveals that he has license to drive the light motor vehicles. But the appellant's contention is that the driver of the second respondent / first respondent herein had no badge to drive the commercial vehicle, since the vehicle involved in the accident is load auto.

12. In this context, the learned Counsel appearing for the first respondent contended that the petitioner had a license to drive the Light Motor Vehicle and no separate badge is required to drive the Commercial Vehicle. As far as the petitioner is concerned, he is the third party to the Insurance Company and since the vehicle was insured with the appellant Insurance Company, the appellant is liable to pay the award amount.

13. In this context, the learned Counsel had relied upon a judgment of the Hon'ble Supreme Court *M/s.Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and Others in Civil Appeal No.841 of 2018*, wherein paragraph No.5 has held as follows:

"5. During the pendency of this reference, the judgment of the three-judge Bench in Mukund Dewangan



C.M.A(MD)No.478 of 2014

WEB COPY

(supra) shall continue to hold the filed and all courts, tribunals and authorities shall, therefore, act on that basis."

14. On careful perusal of the above said judgment, it is clear that already the Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** decided that the driver who had license to drive the Light Motor Vehicle can drive all types of LMV and no requirement of badge for the Commercial Vehicles. Now the Hon'ble Supreme Court referred the said case for Larger Bench of Hon'ble Supreme Court, during the pendency of reference, the judgment of ***Mukund Dewangan*** shall continue to hold the filed and all courts, tribunals and authorities shall, therefore, act on that basis. Therefore, in view of the said judgment the driver in this case had LMV license and thereby, transport endorsement with badge is not a pre requisite condition to drive such vehicle. In this case, since the second respondent / first respondent vehicle was insured with the appellant company on the date of accident, as rightly contended by the learned Counsel appearing for the first respondent / petitioner that since the first respondent / petitioner is a third party to the Insurance Company, and a policy was in force on the date of accident, the Insurance Company has to pay the award amount.



C.M.A(MD)No.478 of 2014

WEB COPY

15. As far as the applicability of Section 49 of the Motor Vehicles Act is concerned, claim under W.C Act is concerned it will cover under the provision of WC Act and the liability of the Insurance Company is depending upon the nature of policy. Hence, Section 49 of M.V Act will not be applicable to this case. As far as the fifth substantial question of law is concerned, the Insurance Company is liable to indemnify for the insured under W.C Act. If any violation of conditions of policy, the indemnifying of the insurance company has to be decided depending upon the nature of violation and condition of the policy. In this case there is no violation of condition of policy. In this case, there is no dispute with regard to the quantum of the award passed by the Tribunal. The appellant has only filed the appeal on the ground of liability and therefore, this Court is of the opinion that the Insurance Company has to pay the award amount.

16. The Tribunal also elaborately discussed about the liability of the Insurance Company and answered that no badge is required in this case and awarded fair compensation. On perusal of records, it reveals that the date of order of Tribunal is 21.10.2013 and the time for payment is 30



C.M.A(MD)No.478 of 2014

days, but the amount was deposited in the Court on 23.12.2013, therefore for the period of delay in deposit, the respondent / petitioner is entitled to interest for the award amount. However the Tribunal has awarded interest at the rate of 12% per annum and the same is higher side. Hence, this Court is fixed the interest at the rate of 9% per annum considering the facts and circumstances of the case. In view of the above said discussions, this Court is of the opinion that this appeal is liable to be partly allowed in respect of interest.

17. In the result, this Civil Miscellaneous Appeal stands partly allowed and the order passed by the Tribunal in W.C.No.94 of 2012 is modified to the effect that the petitioner is entitled to a sum of Rs.4,63,016/- and the second respondent has to pay the award amount. The petitioner is entitled to interest at the rate of 9% interest per annum for the period of delay in depositing the award amount as ordered by the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.01.2024



C.M.A(MD)No.478 of 2014

WEB COPY

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

To

- 1.The Commissioner of Workmen's Compensation,
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.478 of 2014

P. DHANABAL, J.

BTR

C.M.A(MD)No.478 of 2014

12.01.2024