



C.M.A.(MD).No.1198 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1198 of 2017

and

C.M.P(MD) No.11812 of 2017

The Branch Manager,
National Insurance Company Limited,
4132, East Main Street,
Pudukkottai.

... Appellant/2nd Respondent

-vs-

1. Chellammal

... 1st Respondent/Petitioner

2. Sri Kaja Mohideen
(set *Exparte*)

... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, against the order passed in W.C.No.50 of 2006, dated 26.12.2006 (received by the appellant on 03.01.2007) on the file of the Deputy Commissioner (Labour), Thiruchirapalli.

For Appellant : Mr.N.S.Ramakrishnadass
for Mr.C.R.Krishnamoorthy

For Respondents : No appearance



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J U D G M E N T

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The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company challenging the award passed in W.C.No.50 of 2006, on the file of the Deputy Commissioner of Labour, under the Workmen Compensation Act, at Thiruchirapalli.

2. The first respondent/petitioner herein, who was working as a load women in a Tipper Lorry owned by the second respondent/first respondent and insured with the appellant/second respondent, had sustained injuries due to the fact that the driver of the Lorry had suddenly reversed the vehicle without noticing the claimant.

3. According to the claimant, she is a workmen under the second respondent/first respondent and therefore she is eligible to claim a compensation under the Employees Compensation Act, 1923. Hence, she claimed compensation of a sum of Rs.5,00,000/- (Rupees Five Lakhs only).

4. The Insurance Company had filed a counter contending that pre-claim statutory notice as contemplated under Section 10 of the Employees



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Compensation Act, has not been issued and the claimant is not a workmen.

Further, the Insurance Company has contended that the claimant herself was negligent in not running away from the vehicle which was coming in the reverse direction even after noticing the fact that the vehicle is moving.

5. The Deputy Commissioner of Labour, after considering the submissions and evidences let in on either side, had arrived at a finding that the Insurance Company had not disputed that the accident has taken place in the course of employment. The fact that the claimant had sustained disability is also not in dispute. Ex.P.9 – Disability Certificate indicates that the claimant has sustained 68% disability. However, the Commissioner of Labour has taken the disability at 58%. Based upon the above said discussion, the Commissioner of Labour has fixed the compensation at Rs.1,99,363.28/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

6. The learned counsel appearing for the appellant/Insurance Company had contended that there is no evidence to show that the claimant was a workmen under the first respondent in the claim petition. Unless, the employer and employee relationship is established, the claim petition under



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the Workmen Compensation Act, is not maintainable. He further contended that no pre claim statutory notice as contemplated under Section 10 of the Employees Compensation Act has been issued. He further contended that the claimant has not proved her age and the quantum of compensation fixed by the Deputy Commissioner of Labour is on the higher side. Hence, he prayed for allowing the appeal.

7. Though notices were served upon the respondents and their names were printed in the cause list, they have not chosen to appear either in person or through their counsel.

8. I have carefully considered the submissions made by the learned counsel for the appellant and perused the materials available on record.

9. The facts that the injured claimant was unloading the goods from the tipper lorry belonging to the second respondent/first respondent at the relevant point of time is not in dispute. The driver of the said Tipper Lorry had taken the vehicle in the reverse direction and she had sustained injuries. These facts are not in dispute.



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10. A perusal of Section 10 of the Employees Compensation Act, reveals that only if the claim petition is filed beyond a period of two years, the question of issuing mandatory pre claim notice would arise. In the present case, the claim petition has been filed within a period of two years, and hence the question of issuing pre claim notice does not arise.

11. The age of the claimant has been decided by the Deputy Commissioner of Labour, based upon the family Card produced by the claimant. Therefore, this Court is not inclined to disturb the said findings of the Tribunal. That apart, though the disability certificate reveals that she had sustained 68% of disability, the Deputy Commissioner of Labour has only taken as 58% of disability. That apart, the policy marked as Ex.P-8 reveals that premium has been paid under IMT-37 and it covers a loadman. Therefore, viewed from any angle, the Insurance Company is liable to pay the compensation for the injuries sustained by the claimant. The Deputy Commissioner of Labour has properly appreciated the legal and factual situation and has passed the award. There are no merits in the appeal.



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12. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected Miscellaneous
Petition stands closed.

26.04.2024

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

1. The Deputy Commissioner (Labour),
Thiruchirapalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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