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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.315 of 2023 and C.M.P.No.2620 of 2023

M/s United India Insurance
Company Limited,
“Sillingi Building”
No.134, Greams Road,
Chennai 600 006.

... Appellant

Vs.

1. A. Sudha
2. Minor Sachin
3. Minor Babuja
4. Muniammal
5. K. Bhakkiyaraj

.. Respondents

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the Final award dated 03.10.2022, (received on 25.11.2022) passed in E.C.No.455 of 2015, by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour – II) at Chennai.

For Appellant :Mr.J. Michael Visuvasam



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For Respondents : Mr. M. Pachaiyappan

JUDGMENT

This petition has been filed by the appellant against the award dated 03.10.2022 passed in E.C.No.455 of 2015, by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour – II) at Chennai.

2.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

On 11.09.2015 when the husband of the first respondent/K.Anbazhagan was driving the auto rickshaw bearing Registration No.TN-25-AA-9534 in Villupuram to Thiruvannamalai road, the auto lost the control and capsized, due to which the said K.Anbazhagan died. The K.Anbazhagan was employed as a driver by the 5th respondent who is the owner of the auto rickshaw. As the deceased died in the course of employment the legal heirs of the deceased filed a claim petition before the Commissioner for Employees Compensation (Joint Commissioner of Labour – II) at Chennai seeking compensation.

3. Upon considering the oral and documentary evidence the



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Commissioner for Employees Compensation, Joint Commissioner of Labour – II awarded a sum of Rs.7,73,560/- as compensation and directed the appellant to pay the said compensation. Challenging the same the appellant has filed this appeal.

4. The learned counsel for the appellant submitted that the Joint Commissioner erred in holding that the deceased Anbazhagan was employed as a auto driver under the respondent and that the alleged road accident occurred in the course of employment. He further submitted that the Joint Commissioner failed to appreciate the fact that the Ex.P-2 Accident Register Extract which clearly reveals that the deceased was only sitting on the back of seat of the Auto rickshaw . Hence prays to allow this petition.

5. On the other hand, the learned counsel appearing for the respondents contended that the award passed by the Tribunal is based on well-settled principles of law applicable at the time of the order, and therefore, it need not be interfered.

6. Heard both sides and perused the materials on record.



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7. Before advertng further it would be relevant to go through the Judgments passed by this Court in the identical facts of the case.

a. This Court while dealing with the identical issue in the case of ***M.Anbalagan Vs K.M.Asalam and another in C.M.A.No.3135 of 2025 dated 01.07.2015*** held as follows:

9. However, as rightly contended by the learned counsel for the second respondent this Court is empowered to award compensation as payable under the Employees' compensation Act, 1923. In Oriental Insurance Company Vs. Kaliya Pillai and another reported in 2003-1-L.W.113, a Division Bench of this Court held that the aggrieved or interested person can make a claim for compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The only ba is that the claim cannot be made under both the Acts.

10. The Division Bench pointed out that the insurer's liability is to be determined not only with reference to the provisions of the Motor Vehicles Act, but also with reference to the contract of insurance. Therefore, the Division Bench held that the compensation as payable under the workmen's compensation Act, could at least be awarded.

b. This Court while dealing with the identical issue in the case of ***United India Assurance Co Ltd Vs. A. Devi and others in C.M.A.No.1645 of 2020 dated 30.11.2020***

15. Before parting with the case, it may be mentioned herein that the claimants, knowing pretty well that the deceased had used the said Auto for personal use for purchase of clothes for the death anniversary of deceased's mother, have falsely set up the present case, that too, concealing the report submitted by the Inspector of Police, Traffic Investigation Wing, G3 Kilpauk, Police Station,



Chennai which categorically disclosed that only due to the rash and negligent driving the deceased the accident had occurred on the fateful day. Thus, it is amply clear that the claimants have approached the Court with unclean hands and obtained an award from the learned Joint Commissioner of Labour Chennai, and ultimately it was taken up to the High Court by the Insurance Company at the cost of the public fund. It is settled legal position that the Courts of law are meant for imparting justice between the parties and one who comes to Court must come with clean hands. A Person, who's case is based on falsehood, has no right to approach the Court and he can summarily thrown out at any stage of the litigation. Useful reference can be had from S.P.Chengalvaraya Naidu (dead) Vs. Jagannath (dead) and othes (1994) 1 SCC1). Therefore in view of the settled legal position, as the claimants have approached the Court suppressing the report submitted by the Inspector of Police, Traffic Investigation Wing, Chennai, their claim for seeking compensation for the death of the deceased/ first claimant;s husband cannot be sustained.

8. It would be relevant to go through the grounds raised by the learned counsel for the appellant which are as follows:

1. The final award passed by the Learned Commissioner Employees Compensation (Joint Commissioner of Labour – II Chennai) is against law, weight of evidence and the probabilities of case.

2. The learned Joint Commissioner erred in holding that the Anbazhagan was employed as an "Auto Diver" under the Respondent that the alleged road accident is occurred in the course of and out of employment, contrary to the evidence that was brought on record.

3. The leaned Joint Commissioner failed to consider the fact that except for self serving oral evidence of PW1



independent evidence was placed on records to prove that late Anbazhagan was indeed employed as an auto driver under the v respondent

4. The learned Joint Commissioner failed to appreciate the fact that in x-P2 Accident register Extract it is clearly mentioned that late Anbazhagan was only sitting on the back seat of the autorickshaw and the alleged claim that the deceased was driving the Autorickshaw at the time of the accident was far from truth.

5. The learned Joint Commissioner failed to consider the contents of Ex.P-1 FIR wherein there is no mention about the alleged employment of the deceased under the V respondent.

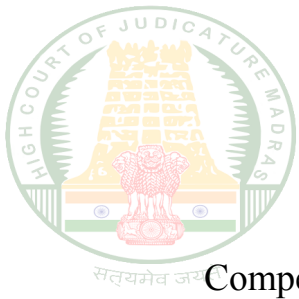
6. The learned Joint Commissioner failed to consider the admission made by Pw-1 that her deceased husband had only gone to buy flowers and garlands for a relative who died in their village and as such the alleged claim that the accident had not occurred in the course of and out of the employment of the deceased.

7. The learned Joint Commissioner erred in holding EX.P.1 FIR cannot be relied upon by the appellant to point out that there was no employer-employee relationship, when the same was relied on by the respondents I to IV, to prove the alleged employment of the deceased and that the accident had occurred in the course of and out of the employment.

8. The learned Joint Commissioner was not justified in holding that the appellant and failed to prove the content of Ex.A.2 Accident Register Extract, which mentions that the deceased was sitting at the back seat, when the very documents is marked at the instance of the respondents 1 to 4 and relied on by them.

9. On going through the Judgments passed by this Court in the

identical facts of the case and the grounds raised by the appellant, the impugned award passed by the learned Commissioner for Employees



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Compensation (Joint Commissioner of Labour – II) at Chennai dated 03.10.2022 is hereby set aside . The claimants/ respondents are at liberty to approach the Motor Accidents Claims Tribunal in the manner known to law to conversion of the workmen's compensation award to the MCOP Award, limitation would not arise due to pecuniary proceedings.

10. With the above directions, this Civil Miscellaneous Petition stands disposed of. No order as to costs. Consequently, connected miscellaneous petition is closed.

01.08.2025

Index : Yes / No
Internet : Yes/ No
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To

1.Commissioner for Employees Compensation (Joint Commissioner of Labour – II) at Chennai.
2.The Section Officer,
V.R Section,
High Court, Madras.

T.V.THAMILSELVI,J.

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