IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**04.06.2025**
Pronounced on	**30.06.2025**

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2288 of 2022 and

C.M.P. No.17657 of 2022

Deputy Manager
The New India Assurance Company Limited,
No.1, Bharathi Road,
Arcot Woodlands Buildings Complex,
Cuddalore 607 001 …Appellant

Vs.

1. Batcha, S/o. Kansaibu
2. Amutha …Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employees' Compensation Act, 1923, praying to set aside the order dated 13.07.2022 made in E.C. Case No.110 of 2020, on the file of the Commissioner for Workmen's Compensation (Joint Commissioner of Labour-2), Chennai-6.

For Appellant	: Mr. S. Dhakshinamoorthy
For Respondents	: Ms. Ramya V. Rao for R1
	No Appearance for R2

JUDGMENT

The second opposite party in E.C. No.110/2020 on the file of the Commissioner for Workmen's Compensation (Joint Commissioner of Labour-2), Chennai-6, is the appellant in this Appeal. The applicant thereon is the first respondent herein and the owner of the vehicle is the second respondent.

2. The 1st respondent/applicant preferred a Claim Application before the above referred authority claiming compensation for the injuries sustained by him in the accident that took place on 11.04.2020.

3. The short facts of the matter which need to be stated for the purpose of the present appeal are as follows:

3.1. On 11.04.2020, at about 07.15 hours, the applicant was driving a Bajaj Auto bearing Registration No. TN-81-Z-7965, owned by the 1st opposite party, from North to South, on Panruti to Kumbakonam Main Road, by keeping extreme left side of the road at moderate speed. At that time, at Keezhakollai Road Junction, a TVS XL Moped bearing Registration No.TN-31-BH-2880 came from East to West at a great speed and to avoid the accident, the applicant applied the break, due to which the auto swerved and hit against the TVS XL Moped and capsized. The applicant suffered the following injuries:

1. Fracture on left leg femur bone.
2. Lacerted injury on left leg and ankle.
3. Lacerated injury near left side eye brow.
4. Grievous injury on head with hematoma.
5. Multiple fracture and grievous injuries all over the body.

3.2. The applicant was admitted in Government Hospital, Panruti, where first aid was given and then he took further treatment in Government Head Quarters Hospital, Cuddalore, as an inpatient and thereafter at Jipmer Hospital, Puducherty, and in various private hospitals. According to the applicant, he spent more money for his medical expenses.

3.3. A complaint was registered in Crime No.184/2020 under Sections 279 and 337 IPC by Muthandikuppam Police Station.

3.4. The applicant was aged 42 years at the time of accident and was employed as a driver by the 1st opposite party/owner of the vehicle and was receiving a salary of Rs.15,000/- per month apart from daily batta of Rs.150.

3.5. According to the applicant the accident happened during and in the course of his employment as a driver under the 1st opposite party/owner of the vehicle and hence the 1st opposite party as a employer, is liable to pay suitable compensation to the applicant as per the provisions of Workmen Compensation Act and accordingly he filed a Claim Application before the above referred authority claiming compensation for the injuries sustained by him in the accident.

4. The said application was resisted by the appellant/Insurance Company by filing a counter stating that the vehicle in question was insured

covering the applicant at the time of accident is false and that the driver of the said vehicle did not possess a valid driving licence at the time of the accident. It is further stated that the applicant was not working as a driver under the 1st opposite party and that he did not sustain injuries during and in the course of employment and infact, the applicant hired the vehicle and met with an accident and therefore, there is no employer- employee relationship between the applicant and the 1st opposite party and therefore, the Claim Application is liable to be dismissed.

5. The Authority placed reliance on Ex.P5/Registration Certificate and Ex.P6 / Insurance Policy, held that the above documents are in the name of the 1st opposite party and therefore, the accident took place in the course of employment and that the applicant is entitled to a compensation of Rs.9,53,960/-.

6. Challenging the said award, the 2nd respondent/Insurance Company has preferred the present appeal.

7. Mr. S. Dhakshinamoorthy, learned counsel appearing for the appellant/Insurance Company submits that the FIR clearly shows that there is no employee-employer relationship between the applicant and the owner of the auto. He would further submit that when the FIR was marked by the applicant, there could not be partial admission and partial denial of the facts narratted in the FIR by the applicant. It is further submitted that when there was a specific pleading that the applicant was not holding a valid driving licence, duty is cast upon the driver to substantiate that he was holding a valid driving licence. The learned counsel, placing reliance on the dictum laid down by the Hon'ble Apex Court in ***Beli Ram Vs. Rajinder Kumar and others (MANU/SC/0715/2020)***, submits that if the employee/driver drives the vehicle without valid driving licence and suffers injuries, the employer alone would be solely liable and the Insurance Company cannot be saddled with liability. However, the authority erred by placing the onus on the insurer to prove that the applicant was not holding valid driving licence.

8. *Per contra,* Ms. Ramya V. Rao, learned counsel appearing for the applicant/1st respondent contended that the applicant met with an accident

during the course of employment and therefore, the Authority has rightly held that the appellant herein is liable to pay compensation to the applicant. She further submits that if the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence, there would be no breach of Section 149(2)(A)(ii) and therefore, the Insurance Company cannot be absolved from his liability to pay compensation on the ground of non possession of valid and effective driving licence by the driver. In support of her contention, she placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Nirmala Kothari vs. United India Insurance Co. Ltd.,*** reported in ***2020 (1) TNMAC 395 (C).***

9. In the present case, the authority came to the conclusion that there is employer- employee relationship between the applicant and the owner of the vehicle and also held that the Insurance Company failed to prove that there has been breach of conditions of policy on the part of the insured and therefore, the Insurance Company cannot be absolved of its liability. The said conclusion has been arrived at based upon the material on record and also on the plea that has been taken by the applicant/respondent.

10. The appeal under Section 30 of the Employees' Compensation Act, 1923 will lie only if there is substantial questions of law involve in the case. The questions of law that have been raised in the present appeal are as follows:

1. *When the petitioner claims in his pleadings that he was employed as Driver, then under law who has the primary duty to prove the said fact?*
2. *Whether the Employees' Compensation Commissioner can subdue the dictum of the Apex Court in Beli Ram Vs. Rajinder Kumar and others (MANU/SC/0715/2020), by placing the onus of proof upon the insurer to prove the negative that the driver did not possess valid driving licence?*
3. *When the FIR was marked by the Claimant, whether there can be partial admission and partial denial of the facts, narrated in the FIR, the the claimant?"*

Admittedly these questions of law are more of factual aspects than on questions of law. The Authority has relied upon Ex.P5/Registration

Certificate and Ex.P6/Insurance Policy, which are in the name of the 1st opposite party / owner of the vehicle, to come to a conclusion that there is employee-employer relationship between the applicant and the owner of the vehicle/1st opposite party and based on the above documents, recorded a finding that the accident took place during the course of employment. Further it is held that the Insurance Company failed to prove that the 1st opposite party's vehicle is rented out to the applicant and that there is no employee-employer relationship between the applicant and the 1st opposite party/owner of the vehicle.

11. Furthermore, the Authority has placed reliance on the dictum laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Swaran Singh and another*** reported in ***2004 ACJ 1*** and held that the Insurance Company is required to establish that the driver of the offending vehicle did not possess a valid / any license at the time of accident and that there is a breach of policy condition. In the present case, though the Insurance Company is required to establish the said breach by cogent evidence, it failed to do so. On a perusal of records, it is seen that RW1 has

categorically admitted that he had not conducted any investigation in this matter and no investigation report is filed on the side of the Insurance Company to the effect that the driver of the vehicle did not possess valid / any license at the time of the alleged accident. Hence, the judgment in ***Beli Ram Vs. Rajinder Kumar and others (MANU/SC/0715/2020),*** relied upon by the appellant/Insurance Company, is not applicable to the present facts of the case.

12. The Authority has rightly held that since the Employee's Compensation Act 1923 is a beneficial legislation, merely on the fact that the driver of the vehicle did not possess a valid/any license at the time of the accident, the Insurance Company cannot be absolved from its liability. The said findings arrived at by the Authority is neither perverse nor arbitrary.

13. On a perusal of the impugned Award, this Court finds that said the findings have been recorded by the Commissioner for Workmen's Compensation (Joint Commissioner of Labour-2), Chennai-6, after proper appraisal of evidence brought on record and there is no illegality in the same.

14. It is well settled that an appeal under Section 30 of the Employee's Compensation Act, 1923 before this Court lies on substantial questions of law. The questions framed in the Memo of Appeal are not even questions of law, much less than substantial questions of law. The Appeal, therefore, is not maintainable and is devoid of any force and is accordingly dismissed. No costs. Consequently connected miscellaneous petition is closed.

30.06.2025

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To

1. The Commissioner for Workmen's Compensation
   (Joint Commissioner of Labour-2), Chennai-6.
2. The Section Officer,
   VR Section,
   High Court, Madras.

K.GOVINDARAJAN THILAKAVADI, J.

bga

Pre-delivery Judgment made in

C.M.A.No.2288 of 2022 and

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