

C.M.A.(MD)No.2 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.2 of 2024

and

C.M.P.(MD)Nos.52 and 2356 of 2024

The Branch Manager,
M/s. Oriental Insurance Company Ltd.,
D.No.1, 1st Floor, Lyola Building,
Salai Road,
Dindigul.

... Appellant

Vs.

1.Vadivel

2.Andivel

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923, to set aside the award dated 09.10.2023, passed in E.C.No.21 of 2019 on the file of the Commissioner for Employee's Compensation, Dindigul.

For Appellant	: Mr.C.Karthik
For R1	: S.Pugalandhi
For R2	: No Appearance



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JUDGMENT

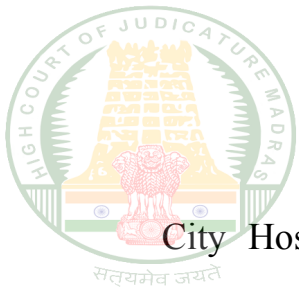
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Challenging the award passed in E.C.No.21 of 2019 dated 09.10.2023, by the Commissioner for Employee Compensation, Dindigul, this Civil Miscellaneous Appeal is filed.

2.For the sake of convenience, the parties are arrayed herein as per the ranking in E.C.No.21 of 2019.

3.The factual matrix of the present case, briefly stated, are as under:-

The petitioner is the claimant injured. The first respondent is the owner of the vehicle. The second respondent is the insurance company. On 08.03.2017, at about 09.00 p.m., the claimant, while driving the Maruthi Omni car owned by the 1st respondent bearing Registration No.TN-66-B-9957 along the Vadasenthur – Vadamadurai road, at Eriyodu over bridge, when the vehicle was traveling from the west to east direction, the goods auto, which came in the opposite direction bearing Registration No.TN-39-AF-4674 dashed against the Maruthi Omni. As a result of which, the claimant had sustained grievous injuries and fractures. Hence, he was admitted for treatment in Dindigul City Headquarters Hospital and further referred for higher treatment to Dindigul



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City Hospital and he took treatment from 08.03.2017 to 21.03.2017 and incurred medical expenditure to the tune of Rs.3,00,000/-. In this regard, the Eriyodu Police Station has registered a FIR in Crime No.44 of 2017 as against the injured himself. Seeking to compensate the injuries suffered by him, he had filed the claim petition in E.C.No.21 of 2019 before the Commissioner for Employee's Compensation, Dindigul.

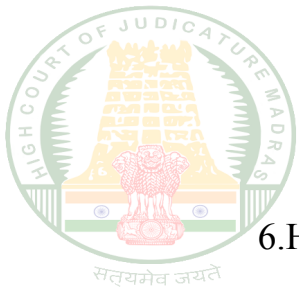
4.The learned Commissioner has examined two witnesses and marked eight documents on the side of the petitioner and one witness was examined and two documents were marked on the side of the second respondent. On the basis of the arguments and evidence deposed and documents marked, the learned Commissioner proceeded to confirm that the claimant is the employer of his father, who is the owner of the Maruthi Omni car, who is the first respondent in the claim petition and following which, the learned Commissioner awarded a sum of Rs.3,52,666/- as compensation to the petitioner. Challenging the same, the second respondent has laid this Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant categorically contended that there is no bar for a son to be an employee of the father.



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However, in the instant case, there is no material for the learned Commissioner to arrive at a conclusion that the injured had been the employee of the first respondent. In fact, no employer employee relationship was subsisting between them at all. For which, the second respondent insurance company duly marked the motor claim form submitted by the 1st respondent before the insurance company, pursuant to the said accident, seeking compensation for the damages sustained in the vehicle. In the said claim form, the column three dealt specifically with the driver at the time of accident in which having filled up the form by stating that the car was driven by one Vadivel, male, aged 31 years, residing at Kurumbapatti, Erode post, Vedansendur Taluk, as against the question if the driver is the owner/paid driver/owners relative or friend, the first respondent had preferred to fill the same as relative or friend. However, as to the question if he was the paid driver, how long he has been in employment? The first respondent skipped filling the same. Had he being an employee and had the injured served the first respondent in the capacity of an employee for whom he had duly paid monthly salary, the first respondent would have filled the question if the driver is the paid driver as 'yes' and would also have filled the column as to the duration of his employment.



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6.Having not done so and despite the said claim form being duly marked as Ex.R1, without considering the same, the learned Tribunal had proceeded to conclude the issue whether an employer employee relationship subsisted between the injured and the first respondent in positive in favour of the injured on the basis of *Manohar Bhimappa More v. Mahadev Bhimappa More and another* reported in *2006 ACJ 850*, in which it has been held that there is no bar for a family member of the family to be a workman of one of the brothers and also relying upon *United India Insurance Company Limited versus Prakash Shankar Gurav and another* reported in *2006 ACJ 747*, in which it has been held that there is no bar for a father engaging his son as employee in a vehicle owned by the father. Relying upon those judgments, the learned Commissioner had proceeded to conclude the said issue in favour of the injured and had awarded the compensation. However, in the instant case, the situation is entirely different and the claim form is duly marked and hence, he pressed for allowing the Appeal.

7.Per contra the learned counsel appearing for the first respondent submitted that the learned Commissioner is the last authority on facts and the learned counsel for the appellant ought not to have taken efforts by arguing before this Court on the facts, which have been already settled before the



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learned Commissioner. For which, he relied upon the case of **HDFC Ergo**

General Insurance Company Limited v. Mota Ram and another reported in

2024 ACJ 1271. He further pointed out that in the aforesaid case, the first proviso to Section 30(1) of the Workmen's Compensation Act, 1923, has been dealt with elaborately and it has been pointed that the question as to whether the Appeal against the findings of the learned Commissioner on employer employee relationship and extent of policy coverage is maintainable. It was held that the jurisdiction of the appellate court is confined only to substantial question of law and it cannot re-appreciate evidence and findings of fact, since the learned Commissioner is the last authority on fact. Even in the instant case, the sole ground on which, the Appeal has been preferred by the insurance company is challenging the findings of the learned Commissioner on employer employee relationship. Hence, the Appeal itself is not maintainable, since the question of employer employee relationship do not involve any substantial question of law and pressed for dismissal of the appeal.

8.Heard the learned counsel on either side and carefully perused the materials available on record.

9.The only point to be decided is that whether the Appeal filed against



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the order of the learned Commissioner, on employer employee relationship is maintainable under Section 30(1) of the first Proviso of the Workman's Compensation Act, 1923, in view of the judgment reported in **2024 ACJ 1271**, as pointed out by the learned counsel for the claimant. No doubt, in the instant case, the ground, which has arisen for consideration is as to, Whether the learned Commissioner's rejection of the claim application marked as Ex.R2 by the insurance company, which disproved the employer employee relationship between the injured and the owner of the vehicle and thereafter concluding that a son can be the employee of the father - would amount to a substantial question of law? The same has been dealt with by the Hon'ble Apex Court in the case of **Gottumukkala Appala Narasimha Raju and Others v. National Insurance Co. Ltd., and another** reported in **2007 (1) TNMAC 460 (SC)** and the relevant portion of the same is expected as follows:-

*“Workmen's Compensation Act, 1923, Section 2(1)(n) & 3(1)
Workmen – Claim Application – malafide claim – Death of driver of tractor in accident and claimants claimed compensation from owner and insurance company of the tractor – owner of tractor who is widow of the deceased stated that she was living separately from her husband before his death, deceased was employed as driver and was a workman – neither any documentary proof to establish contract of employment was produced nor any independent witness was examined – if they were living separately in view of certain disputes, the question of husband being a*



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workman under wife appears to be far-fetched – story has been concocted for purpose of claim – whether deceased was a workman and the claim was bonafide – held: no; owner of tractor joined hands with claimants for laying a claim against insurance company; claim dismissed.”

10. In the instant case, no doubt, the vehicle involved is covered by the insurance policy. The owner of the vehicle is the father of the injured. Despite the father diligently filling up the claim form before submission to the insurance company for claiming compensation for the damages sustained in the motor vehicle by categorically mentioning the injured as his relative and not employee, the learned Commissioner without appreciating the marked documents on behalf of the second respondent Insurance company, having proceeded to conclude the issue as to the subsistence of employer employee relationship between the father and son in favour of the injured, would obviously give way to a substantial question of law. Since the application itself can be considered as a *malafide* claim, in the absence of an employer employee relationship, any claim petition made by a relative of the owner of the vehicle under the guise of employer employee relationship is *malafide* and accordingly, the order of the learned Commissioner should be necessarily interfered and the same is set aside.



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11. In view of the above, the order passed in E.C.No.21 of 2019 dated 09.10.2023, by the Commissioner for Employee Compensation, Dindigul, is set aside. This Civil Miscellaneous Appeal is allowed accordingly. The appellant insurance company is permitted to withdraw the award amount, if any already deposited, within a period of three weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Commissioner for Employee Compensation, Dindigul.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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