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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 31/AIL/Lab./T/2024,
Puducherry, dated 12th March 2024)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 28/2015, dated 20-12-2023 of the Labour Court, Puducherry, in respect of the dispute between the management of M/s. Poorvika Mobile World Limited, Puducherry and its workman Thiru N. Narayanasamy over non-employment and disablement compensation has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. SANDIRAKUMARAN,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Tmt. G.T. AMBIKA, M.L., PGDCLCF.,
Presiding Officer.

Wednesday, the 20th day of December, 2023

I.D. (L) No. 28/2015
CNR. No. PYPY06-000075-2015

Narayanasamy,
S/o. Nagappan,
No.10, Murugal Koil 2nd Street,
Pudhu Nagar,
Katterikuppam and Post,
Mannadipet Commune,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Poorvika Mobile World Limited,
No. 181, Anna Salai,
Puducherry. . . Respondent

This Industrial Dispute coming on 15-11-2023 before me for final hearing in the presence of Thiruvallargal L. Rajendiran and R.T. Shankar, Counsel

for the Petitioner and Thiruvallargal R. Rajaprakash and V. Veeraragavan, Counsel for the Respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 52/AIL/Lab./J/2015, dated 18-06-2015 of the Labour Department, Puducherry to resolve the following dispute between the Petitioner and the Respondent, *viz.*

(a) Whether the dispute raised by the Petitioner N. Narayanasamy against the Management of M/s. Poorvika Mobile World, Puducherry over his non-employment is justified? If justified, what relief petitioner is entitled to?

(b) Whether the claim of the petitioner for the reimbursement of medical expenses incurred by him for his treatment at PIMS, since he met with an accident during the course of employment and his claim of disablement compensation as per Act is justified? If justified, what relief the petitioner is entitled to?

(c) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The averments set forth in the claim petition is as follows:*

(i) The petitioner was working from 24-07-2010 under the respondent management, *i.e.*, Poorvika Mobiles World Limited, at No. 181, Anna Salai, Puducherry. As per the instructions of the respondent management to have advertisement work at marakanam he along with another employee attended the company work at marakanam and after completing the work, while returning to Puducherry at Annumanthai he met with an road traffic accident during the course of employment on 16-06-2013 at about 2.00 p.m. and sustained serious spinal injury.

(ii) The petitioner family contacted the respondent/management and they assured to extend medical benefits and to provide employment to the petitioner and also for reimbursement of the medical expenses as there was no insurance coverage under E.S.I. Act and the petitioner was admitted at PIMS hospital for treatment. The petitioner undergone surgery as inpatient for more than 15 days and after surgery he was bedridden and took treatment as outpatient for nearly four months.

(iii) The petitioner approached the management to provide employment after the medical checkup and as the Doctor certified him fit to perform his duty. The management did not allow him to enter the mobile shop and also refused to provide employment and to refund the medical expenses. The accident occurred only during office hours and the management registered in E.S.I. only in the month of February 2014 and only in the month of February the petitioner submitted his family photo and the E.S.I. temporary identity certificate provided only on 21-03-2014.

(iv) As there was no ESI coverage at the time of accident, the petitioner had no right to claim benefit under ESI Act for medical treatment. The petitioner sustained injury only at the time of advertisement work at Marakanam. Therefore, the petitioner requested to provide employment with all legal benefits and also provide medical expenses incurred by his family members at PIMS hospital and also disabled compensation as applicable under the Act.

(v) The management even though assured to provide the employment during hospitalization of the petitioner, but, refused to provide employment when he approached for employment and compensation. Therefore, he raised an Industrial Disputes before the Labour Officer conciliation, Puducherry *vide* representation, dated 13-03-2014 and 11-07-2014. During the course of conciliation, there is no representation from the management of Poorvika Mobiles Limited, at Puducherry. As there is no cooperation on the part of the management, the conciliation proceedings ended in failure and referred the matter to this Court.

3. *The averments set forth in the counter is as follows:*

(i) The present Industrial Dispute as well as the claim petition filed by petitioner is not maintainable under Law. From the bare perusal of claim petition, it is alleged that the respondent has not paid the ESI contribution, therefore, the petitioner was not benefitted under ESI Act. If, such the actual grievance of petitioner, he ought to have approached the ESI Corporation, Puducherry, for the alleged non-payment of contribution by respondent. On the other hand, the petitioner is also claiming compensation and disablement compensation for the alleged employment injuries sustained by him during the course of employment. If, such is the actual facts and grievance, the petitioner ought to have approached the authority appointed under ESI Act. Therefore, the present ID is not maintainable and further, this Court may conduct the preliminary enquiry on the above contentions before conducting the full trial in the above Industrial Dispute.

(ii) The petitioner approached the ESI corporation with a claim of refund of expenditures, who in turn refused to entertain such claim citing that he has not approached the ESI Hospital at first instance, but, has taken complete treatment at PIMS Hospital without getting approval from ESIC. The petitioner is not in a position to file any claim petition under Motor Vehicles Act as there is no FIR. Petitioner devised a plan and opted to file such frivolous petition against the respondent.

(iii) The petitioner is employed by respondent as sales executive and it is true that he was assigned an advertisement work at Marakanam on 16-06-2013 along with two other employees namely, Thiruvallargal R. Thulasiraman and P. Vasanthakumar with a clear and categorical instruction to go by bus to Marakanam, but, the petitioner breached the very condition imposed and went in two wheeler that too in triples without wearing helmet and therefore, the petitioner himself is liable for injuries sustained to him and hence, the respondent is not liable to pay any compensation.

(iv) The petitioner is covered under the ESI Act. The ESI number was provided to him as early as from 27-04-2011, which is mentioned even in his monthly salary slip. The truth of the matter is immediately after the accident the petitioner was taken to PIMS hospital. The other two employees intimated the respondent about the accident and the Branch Manager visited the petitioner at PIMS Hospital and given a sum of ₹ 10,000 towards advance. The respondent is not only paying ESI contribution to its employees but also taking private insurance with New India Assurance Co. Limited. The petitioner submitted a claim of ₹ 15,588 to the respondent, who in turn processed his claim form with its insurance company and settled a sum of ₹ 8,391 from the insurance and the respondent settled ₹ 6,265 to the petitioner. But, with ulterior motives to extract and extort money from respondent, the petitioner now filed the present petition.

(v) The petitioner informed the respondent that he could not immediately report to duty and he requested the respondent to grant leave which was accepted and paid monthly salary to petitioner till December, 2013. The petitioner approached the respondent with a request of employment who in turn employed the petitioner on the same role which was continued for 5 days by petitioner. Thereafter, the petitioner himself has claimed that he could not stand for long hours therefore, he is given up his employment with respondent. Hence, it is very clear that the respondent has not terminated the petitioner,

but, it was the petitioner who informed the respondent that he is moving from the respondent because of the reason that he could not stand for long. The respondent is still willing to provide employment to petitioner by application of principle of "No Work No Pay". The petitioner is now working in a private company at NRS mobile, Villianur as Lava Promoters. Hence, the claim of petitioner is liable to be dismissed.

4. *Points for determination:*

1. Whether the accident has occurred during the course of employment and the injury sustained by the petitioner is an employment injury?

2. Whether the petitioner is entitled for reimbursement of medical expenses incurred by the petitioner?

3. Whether the petitioner is entitled for disablement compensation as claimed by the petitioner?

4. Whether the petitioner is entitled for the relief of reinstatement with full back wages, continuity of service and all other attendant benefits?

5. Whether the dispute raised by the Petitioner over his non-employment is justified or not?

6. To what other relief the Petitioner is entitled to?

5. On the side of Petitioner, the Petitioner himself was examined as P.W.1 and Exs.P1 to P10 was marked. On the respondent side Mr. L. Ezhilarasan Branch Manager of Respondent Management was examined as R.W.1 and through him Exs.R1 to R8 were marked. Mr. Dr. G. Parabakaran was examined as RW2 and Ex.C1 was marked through him.

6. *On points 1 to 6:*

The contention of the petitioner is that when the petitioner was working in the respondent shop, the respondent management had instructed the petitioner to do advertisement work on 16-6-2013 in a place called Marakanam along with two other employees and thereby, the petitioner went to Marakanam along with two employees and after completion of advertisement work when the petitioner was returning to Puducherry, the petitioner had met with road accident and thereby sustained serious spinal injury and the said accident had taken place during the course of employment and when the family members of the petitioner had immediately contacted the respondent management it was assured by the respondent to extend medical benefits to the petitioner and to reimburse the medical expenses and provide employment to the petitioner. Further, the contention of the petitioner is that the father of the

petitioner had admitted the petitioner as inpatient in the PIMS Hospital as there was no insurance coverage under ESI Act and had spent several lakhs amount for the treatment of the petitioner and later when the petitioner recovered from the accidental injuries and approached the respondent for work the respondent has refused to provide job to the petitioner and also refused to provide medical expense and further, the respondent management got registered with ESI only in the month of February, 2014 and provided ESI temporary Identity Card to the petitioner on 21-03-2014 and therefore, the respondent is liable to pay medical expense and compensation and employment to the petitioner as the respondent management had not paid the ESI subscription properly and there was no ESI coverage during the time of accident.

7. Whereas, the contention of the respondent is that it is true that the respondent had assigned an advertisement work at Marakanam on 16-06-2013 to the petitioner and other two of its employees namely, Thiruvallargal R. Thulasiraman and P. Vasanthakumar with clear instructions to go by bus, but, the petitioner had breached the said conditions and traveled in a two wheeler with the said two employees without wearing helmet and thereby the petitioner himself is liable for the injuries sustained by him and hence, the respondent is not liable to pay any compensation to the petitioner. The further contention of the respondent is that the petitioner is covered under ESI Act because the respondent is not only paying ESI subscription, but, also has taken private insurance to its employees and thereby the petitioner ought to have taken treatment at ESI hospital, but, has taken treatment at PIMS Hospital at his own risk for which the respondent is not liable to pay any medical expenses and further the respondent has paid an advance amount of ₹ 10,000 at PIMS Hospital and that apart when the petitioner has raised claim for ₹ 15,588 the insurance company has settled a sum of ₹ 8,391 and the respondent had paid ₹ 6,265 directly to the petitioner. It is the further contention of the respondent that as the petitioner could not immediately report to the duty the respondent on humanitarian ground has paid monthly salary to the petitioner till December, 2013 and later when, the petitioner approached the respondent for work the respondent had provided work to the petitioner but it was the petitioner who himself has left the job stating that he could not stand in the shop for hours, but, however still the respondent is willing to provide employment to the petitioner on the principle of "No Work No Pay".

8. In this case, the respondent admits that the respondent management has instructed the petitioner to do advertisement work at Marakanam on 16-06-2013

along with its two employees, but, contends that it was the specific instruction of the respondent to the petitioner that the petitioner had to commute by bus, but, the petitioner violated the said instruction and had travelled in a two wheeler along with the two other employees without wearing helmet and thereby, it cannot be said that the petitioner has sustained employment injury. When, it is the specific contention of the respondent that the respondent had instructed the petitioner and two of its employees to commute by bus then it is for the respondent to prove the same. The respondent in this case has not examined either the other two employees who traveled with the petitioner or the concerned official who gave instruction to the petitioner. That apart the R.W.1 during his cross-examination has deposed that the respondent had conducted enquiry as to why the other two employees namely, Thiruvargal R. Thulasiraman and P. Vasanthakumar had travelled with the petitioner in a two wheeler and further, deposed that the enquiry was not conducted by issuing written notice regarding the same.

9. This Court finds that had it been true that the petitioner and other two employees were directed to commute by bus to Marakanam and the employees have breached such condition then the respondent at the earliest point of time ought to have initiated enquiry or call for explanation from the other two employees for such conduct, but, in this case no such documents has been produced to substantiate that the respondent has taken action against the employees for alleged breach of instructions. Therefore, in the said context this Court finds that the contention of the respondent that the respondent had instructed the petitioner and other two employees to commute for advertisement work at Marakanam by bus is found to be an after thought and evasive one and stands unproved.

10. As the accident has occurred during the course of employment and the injuries sustained by the petitioner is also out of and in the course of his employment this Court holds that the injury sustained by the petitioner is employment injury. Now, the next question that arises for consideration is whether the petitioner ought to have taken treatment at ESI hospital and not in a private hospital. The contention of the respondent is that the respondent had been paying ESI contribution and therefore, the petitioner ought to have taken treatment at ESI Hospital. Whereas, the contention of the petitioner is that the respondent has not paid the ESI contribution regularly and further, only in the month February, 2014 the respondent has registered with ESI Corporation and thereafter has issued ESI temporary Identity Certificate only on 21-03-2014.

11. The petitioner to substantiate the same has produced Ex.P5 ESI temporary Identity Certificate and on perusal of the same it is found that it is dated 31-03-2014. When, it is the contention of the respondent that as stated in Ex.P5 the date of registration of respondent concern with ESI Corporation was on 27-04-2011 and thereafter onwards the ESI contribution was regularly paid to ESI Corporation and as on date of accident there was the ESI benefits coverage then it is for the respondent to substantiate the same. The respondent during the cross-examination of P.W.1 has suggested that in the salary receipt issued by the respondent the ESI number details are available, the P.W.1 by way of reply has deposed that the P.W.1 was not given any salary receipt at any point of time and he was given only Ex.P5 ESI temporary Identity Certificate after completion of all treatments.

12. Thus, from the evidence of P.W.1 and Ex.P5 ESI temporary Identity Certificate it could be inferred that the case of the petitioner is that at the time of accident he was not issued any ESI Identity Card and there was no any ESI benefit coverage and further, the respondent has not issued any salary receipt with ESI details to the petitioner at any point of time. Whereas, the contention of the respondent by way of cross-examination of P.W.1 is that in the salary receipt issued to the petitioner the ESI details will be available. The respondent to substantiate that in the salary slip issued by the respondent the ESI details are available has produced Exs.R2 to R7. On perusal of Exs.R2 to R7 it is found that they are Salary receipt for the Month of May 2013 to August 2013 and, November and December 2013 and further, in the said salary receipt the ESI number is also mentioned.

13. However, this Court finds that R.W.1 during his cross-examination has deposed that the respondent while disbursing salary used to affix stamp and obtain the signature of the concerned employees in the Salary receipt but on perusal of Exs.R2 to R7 it is found that in the salary receipt there is either such stamps have been affixed or signature of the petitioner is available. The R.W1 during his cross-examination has admitted the same and has deposed that Exs.R2 to R7 were downloaded documents. This Court finds that when it is the specific contention of the respondent that the respondent used to affix stamps and obtain signature of its employees in the salary receipt then in such case the same ought to have been produced before this Court, but, the respondent on other hand has produced salary receipts which are stated to be downloaded one and thereby this Court concludes that the genuineness of Exs.R2 to R7 are doubtful and cannot be relied by this Court.

14. Therefore, this Court holds that the respondent has failed to prove that ESI contribution was regularly paid by the respondent and further, during the period of accident ESI benefits coverage was available to the petitioner. Hence, in the said context, this Court holds that the respondent cannot contend that the petitioner ought to have taken treatment at ESI Hospital and not at PIMS Hospital. Hence, as the injury sustained by the petitioner was of employment injury this Court holds that the respondent is liable to pay the medical expense and loss of income to the petitioner. The petitioner has produced Ex.P8 bills issued by PIMS. On perusal of Ex.P8 it is found that the total medical bills amount comes to ₹ 22,926. The R.W.1 during his re-examination has deposed that apart from ₹ 10,000 the respondent has reimbursed 80% of Medical bills to the petitioner through Medi Assist Company. This Court on perusal of evidence of R.W.1 finds that the petitioner has not disputed the same by way of further examination of R.W.1. Further, more the petitioner has produced Ex.P10 letter issued by PIMS Hospital to Medi Assist India certifying that at the time of accident the petitioner was not under the influence of Alcohol and to do the needful. Thus, from the evidence of P.W.1 and R.W.1 and Ex.P10 it could be inferred that the medical claim of petitioner is found to have been settled through Medi Assist India. Therefore, out of medical bills amount of ₹ 22,926 the respondent is found to have settled 80% of bill amount that is ₹ 18,340 and hence, the respondent is liable to pay balance medical bills amount of ₹ 4,586 to the petitioner.

15. As per Ex.P3 Discharge Summary, there is no any finding that the petitioner when brought to hospital was under the influence of alcohol and further, in Ex.P10 it is clearly stated by the PIMS Hospital that the petitioner was not under the influence of alcohol at the time of admission. Therefore, the contention of the respondent that at the time of accident the petitioner was under the influence of alcohol is found to be an after thought defence taken by the respondent. Similarly, the contention of the respondent that the petitioner had travelled in the two wheeler in triples and without wearing helmet also stands unproved by the respondent.

16. The yet another contention of the petitioner is that the petitioner is entitled for loss of income from the respondent. As per the evidence of P.W.1 during cross-examination it is deposed that the respondent has paid 50% of salary to the petitioner till December, 2013. However, it is found that the petitioner has neither deposed the quantum of monthly salary nor produced any document to substantiate his monthly salary. Therefore, in the said context this Court is unable to compute and conclude any loss of income for the period from July, 2013 to December, 2013. As per Ex.C1 the

percentage of disability is shown as 10%. Therefore, this Court finds that it would be appropriate to direct the respondent to pay a consolidated amount of ₹ 50,000 towards disability.

17. It is the case of petitioner that when he approached the respondent in the month of February, 2014, the respondent refused to give employment to the petitioner and whereas, it is the contention of the respondent that it was the petitioner who had abandoned the work stating that he was unable to stand in the shop for hours and further, the respondent is willing to provide employment to the petitioner at any time on the basis of "No work No pay" but, the respondent has not produced any document to substantiate the same. The R.W.1 also admitted that the respondent has not issued any notice to the petitioner as to why the petitioner has not reported to duty. Hence, in the said circumstances the contention of the respondent that the petitioner himself has abandoned the work stands unproved. Therefore, this Court holds that the petitioner is entitled for the relief of reinstatement with back wages.

18. Now, coming to the aspects of back wages and other attendant benefits is concerned, this Court finds that in this case the respondent has not proved that the Petitioner was gainfully employed anywhere else and earning income. However, it is found that the Petitioner was sustaining his day to day life even in this situation and the same could not be done without any income. Hence, this Court on considering the circumstances, deems fit that the Petitioner is entitled for 30% back wages with continuity of service and other attendant benefits. Thus, the points are answered accordingly.

In the result this petition is allowed by holding that the industrial dispute raised by the Petitioner as against the Respondent Management over his non-employment is justified and the Respondent Management is directed to reinstate the Petitioner into service within two months from the date of this Award and further, directed to pay 30% of back wages from January, 2014 to till the date of reinstatement with continuity of service and other attendant benefits and further, directed to pay the balance medical expense of ₹ 4,586 and compensation of ₹ 50,000 towards temporary disablement. There is no order as to costs.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in open Court on this the 20th day of December, 2023.

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness :

PW1 — 26-04-2018 Thiru Narayanasamy
(Petitioner herein).

List of petitioner's exhibits :

Ex.P1 — 05-12-2014 Photocopy of the Conciliation
Failure Report.

Ex.P2 — 18-06-2015 Reference of the Labour
Department, Puducherry.

Ex.P3 — 24-06-2013 Photocopy of the Discharge
Summary issued by the PIMS
Hospital.

Ex.P4 — 04-01-2014 Payment Voucher issued by
the Respondent.

Ex.P5 — 31-03-2014 Photocopy of the ESI Temporary
Identity Certificate.

Ex.P6 — 23-07-2010 Photocopy of the Appointment
Letter issued by the
Respondent.

Ex.P7 — — Photocopy of the PIMS
Hospital Medical Records.

Ex.P8 — — Photocopy of the PIMS
Hospital Medical Records.

Ex.P9 — — Photocopy of the Identity
Card issued by the
Respondent.

Ex.P10 — 21-06-2013 Photocopy of the No drunk
letter issued by PIMS
Hospital, Puducherry.

List of respondent's witnesses :

RW1 — 10-10-2019 Mr. Ezhilarasan, Branch
Manager of the Respondent
Management.

RW2 — 19-07-2023 Mr. Dr. Prabakaran, H.O.D.,
I.G.P.G.I, Puducherry.

List of respondent's exhibits :

Ex.R1 — 10-10-2019 Photocopy of the
Authorization letter.

Ex.R2 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of May 2013.

Ex.R3 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of June 2013.

Ex.R4 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of July 2013.

Ex.R5 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of August 2013.

Ex.R6 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of November 2013.

Ex.R7 — 14-03-2014 Photocopy of the Salary Slip
of the petitioner for the
month of December 2013.

Ex.R8 — 27-04-2011 Photocopy of the ESIC
Employees details of the
petitioner.

List of court's exhibits :

Ex.C1 — 11-08-2022 Disability Certificate issued
by the Medical Board,
I.G.G.G.H. and P.G.I.,
Puducherry.

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 38/Lab./AIL/S/2024,
Puducherry, dated 21st March 2024)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Indian Red Cross Society, Health Department, Puducherry and the Mission Director, Puducherry State Health Mission, Puducherry, against the Puducherry, Karaikal and Yanam Health Departments, 108 Ambulance Service Drivers Association, Puducherry, over Regularization in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;

Now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991 of the Labour Department, Puducherry, to exercise the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by the