

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 404 of 2015

&

M.P. No. 1 of 2015

The Oriental Insurance Company Ltd.,
115, Prakasam Road, Broadway,
Chennai 600 001.

..Appellant

Vs.

1. Tmt. Jayalakshmi
2. Udayakumar

3. M/s. Panc Transporters,
50 & 51, Poonamallee High Road,
Near ACC Concrete Plant,
Poonamallee,
Tiruvallur District.

..Respondents/Claimants

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the workmen's compensation Act of 1923 as against the order dated 20.08.2014 passed in W.C. No. 114 of 2011 on the file of Commissioner for Workmen's Compensation (Office of the Deputy Commissioner of Labour-2, Chennai -6).

For Appellant :: Mr.R. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.4,20,025/- passed by the Commissioner for Workmen's Compensation (Office of the Deputy Commissioner of Labour-2), Chennai, in favour of the legal heirs of one Gurusamy, aged about 54 years, who died during the course of his employment, while working as a Lorry Driver under the 3rd respondent herein.

2. Heard Mr.R. Sivakumar, learned counsel for the appellant.

3. The case of respondents 1 and 2, the legal heirs of deceased Gurusamy is that Gurusamy was working as a Lorry Driver under the 3rd respondent and on 19.09.2010, he drove the lorry, loaded with cement

mixture from Poonamallee to Nemam; while returning, after unloading the cement mixture, near EVP College, the said Gurusamy suffered heart attack due to stress and continuous heavy work and died at the wheels. A case was registered in Crime No. 254 of 2010 on the file of Nasrathpet Police Station on the same day. Therefore, the claim petition was filed seeking compensation of Rs.10 lakhs.

4. The 3rd respondent/owner remained ex parte and the appellant, who is the insurer contested the matter stating that death was not due to stress and strenuous work as alleged by the claimants; that the workman died naturally, due to heart attack and therefore, no amount is liable to be paid as compensation.

5. On the side of the claimants, the 1st respondent herein, the wife of the deceased, was examined as P.W.1, through whom, Ex-P1, FIR, Ex-P2, Death Certificate, Ex-P3, Postmortem Certificate, Ex-P4, Legal Heirship Certificate, Ex-P5, Registration Certificate, Ex-P6, Xerox of Insurance Policy and Ex-P7, driving licence of the deceased were marked. P.W.1 categorically deposed that because of stress and continuous work, her husband Gurusamy died during the course and out of employment.

6. On the side of the appellant, Ex-R2, report of cause of death from Forensic Sciences Department, Chennai -4, Ex-R3, notice sent to the 3rd respondent/owner and Ex-R4, insurance policy were marked through R.W.1, who is an official of the Insurance Company.

7. It is an admitted fact that the workman Gurusamy died at the wheels on 19.09.2010. It is also clear from the evidence adduced that the deceased worked from the morning of 18.09.2010 till 19.09.2010, which finds place in the claim petition itself. When a person continuously drives a vehicle for 2 days, definitely, there is bound to be stress due to overwork. The workman Gurusamy died, that too, when he was at the wheels. Therefore, the Commissioner for Workmen's Compensation, rightly came to the conclusion that the workman died during the course and out of employment. Eventhough P.W.1 categorically stated that the workman died due to stress and Ex-R2, report of cause of death from Forensic Sciences Department was marked by the appellant, the Medical Officer, who issued the said document was not examined. When it is clear that death was due to coronary heart disease during employment, the documents filed as well as the very fact that he died during employment will prove that he died due to stress and strain arising out of employment. If the appellant intended to prove that death was a natural one, due to heart attack, and not because of the work undertaken by the deceased, then nothing prevented them from examining the employer or a co-worker of the deceased. However no such steps have been taken. The Commissioner for Workmen's Compensation, in page No.8, at paragraph

No.3, observed that the deceased was working from 18.09.2010 till 19.09.2010, continuously without any rest, and rightly came to the conclusion that the workman died due to stress and strain arising out of and during the course of employment. The failure to examine the Doctor or the person, who issued Ex-R2 would go against the appellant, which was also rightly observed by the Commissioner. The Workmen's Compensation Commissioner relied upon various judgment of the Honourable Apex Court as well as the judgments of this Court to infer that "it is safe to presume that strain had contributed to o accelerated or hastened the accident and even in the absence of direct evidence, if the probabilities are more in favour of the claimants, considering the object of the Act, the Commissioner, who is the competent authority is to infer that the accident did , in fact, arose out of and in the course of employment". The following judgments were relied upon by the Commissioner for Workmen's Compensation in support of his conclusion:

- (i) Param Pal Singh through father V. National Insurance Co. Ltd and another (2013 (1) TN MAC Pg.1 (SC))
- (ii) P. Kalyani V. The Divisional Manager, Southern Railway (Personal Branch) Divisional Office, Madras (2003 (3) MLJ 314 Madras)
- (iii) Shanmuga Mudaliar T. V. Noorjahan (2003 1 LLJ 776 Madras)
- (iv) The Oriental Insurance Co. Ltd. V. Nagaraj and others (2008 (2) CTC 407 Madras)
- (v) National Insurance Co Ltd. V. A. Saroja and others (2009 1 MLJ 495)
- (vi) The Managing Director, High land Parade Resort, M/s.Highland Holiday Homes P. Ltd, Kodaikanal Taluk V. Subbulakshmi & Others (2011 (2) TN MAC 227 Madras)
- (vii) Divisional Manager, Royal Sundaram Alliance Insurance Co. Ltd V. Naveetham and others (2011 (2) TN MAC 171)
- (viii) Komalam & Others V. National Insurance Co. Ltd (Judgement of this Court dated 18.09.2013 in C.M.A. Nos. 251/2009 etc.)
- (ix) Manager, ICICI Lombard General Insurance Co Ltd., Chennai - 34 V. Kanthimathi & Others (Judgment of this Court dated 10.01.2014 in C.M.A.No. 655 of 2009)
- (x) National Insurance Co. Ltd., Bhavani V. A. Saroja & Others ((2009) 1 MLJ 495)
- (xi) Chief General Manager, Thermal Power Station II, Neyveli Lignite Corporation Ltd., Neyveli V. G. Dhanam and Others (2006 3 MLJ 982).
- (xii) Mallikarjuna G. Hiremth V. The Branch Manager, The Oriental Insurance Company and Another (2009 LR 350 Supreme Court of India (Civil Appeal No. 956 of 2009 decided on 12.02.2009)

Therefore, when the workman died during the course of employment, naturally, the Courts have to infer that death occurred on account of stress and strain arising out of and in the course of employment. Hence, the said finding given by the Workmen's Compensation Commissioner warrants no interference.

8. Though the claimants claimed a sum of Rs.10,000/- as the monthly income of the deceased, in the absence of any proof, in regard thereto, the Commissioner, went by the Minimum Wages Act, wherein the State Government, by G.O.(2D) No. 64, Labour and Employment Department dated 23.07.2009, fixed Rs.5966/- as the monthly income for a driver and accordingly, took Rs.5966/- as the monthly income of the deceased and 139.13 as the relevant factor and determined the compensation as follows:

Compensation :: 50/100 x 5966 x 139.13
 :: Rs.4,15,025/-

A sum of Rs.5000/- was awarded towards "Funeral Expenses" and in all, a sum of Rs.4,20,025/- was awarded as compensation.

9. While awarding Rs.4,20,025/- as compensation, the Commissioner directed the appellant to pay the said amount within 30 days from the date of receipt of a copy of that order failing which the appellant was directed to pay interest @ 12% from the date of expiry of 30 days from the date of accident till the date of deposit. However, the said direction is patently illegal and erroneous as Four Judge's Bench of the Honourable Apex Court, in the judgment rendered in Pratap Narain Singh Deo V. Sreenivas Sabata and another reported in 1976 (1) SCC 289 has categorically stated that cause of action for claiming interest arises, not from the date of expiry of 30 days from the date of accident, but from the date of accident itself, i.e, 19.09.2010 and therefore, the compensation of Rs.4,20,125/- should be paid to the claimants with interest @ 12% per annum from 19.09.2010 till the date of payment. Therefore, the award passed by the Workmen's Compensation Commissioner, insofar as it relates to payment of interest, is modified to the above effect.

10. Since the Workmen's Compensation Act, 1923 is a beneficial legislation, enacted to safeguard the interests of workmen, even in the absence of any appeal/cross-appeal by the claimants, taking note of the illegality committed by the Commissioner, this Court, suo motu, has modified the award passed by the Commissioner with regard to interest portion alone and ordered interest @ 12% per annum from the date of accident, namely, 19.09.2010, till the date of payment.

11. In the result, no substantial question of law arises for consideration and the Civil Miscellaneous Appeal stands dismissed with the above modification. No costs. Connected M.P. is closed.

12. It is submitted by the learned counsel for the appellant, that as per the award passed by the Commissioner for Workmen's Compensation, a sum of Rs.4,20,025/- was deposited by the Insurance Company. Hence, the balance amount, namely, interest @ 12% per annum, on the award amount, from 19.09.2010 till the date of

payment has to be deposited by the appellant within a period of four weeks from the date of receipt of a copy of this order and the same shall be paid to the claimants within a period of one week from the date of such deposit. As far as the amount already deposited is concerned, the claimants are permitted to withdraw the same immediately.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv
To

1. The Commissioner for Workmen's
Compensation (Office of the Deputy)
Commissioner of Labour), Chennai-6.

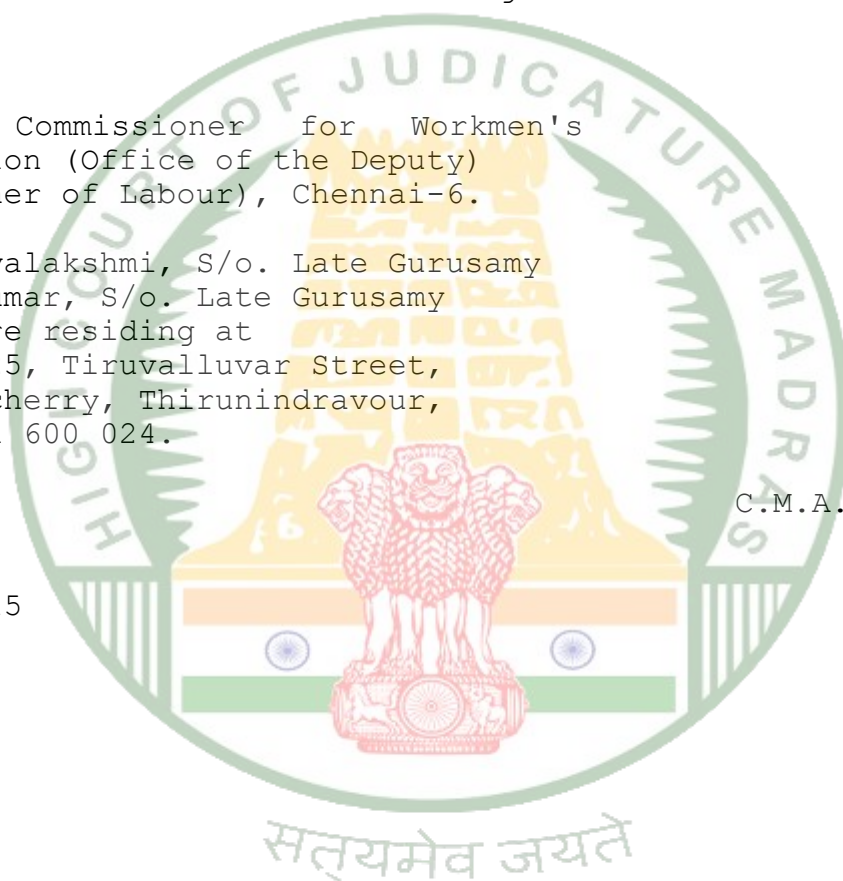
2. The Jayalakshmi, S/o. Late Gurusamy

3. Udayakumar, S/o. Late Gurusamy

Both are residing at
No.5/225, Tiruvalluvar Street,
Nemilicherry, Thirunindravour,
Chennai 600 024.

C.M.A. No. 404 of 2015

LRS (CO)
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