



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.07.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI
C.M.A. (MD) No. 1625 of 2013 and
M.P. (MD) .No.1 of 2013

The Regional Manager,
The Oriental Insurance Company Limited,
Third Party Hub,
16, North Veli Street,
KJR Complex, Madurai-625 001 ... Appellants/2nd Respondent

Vs.

1. Sulthan Maideen
2. Noorjahan ... 1st & 2nd Respondent/1st & 2nd Petitioners
3. K. Gurunath
(3rd respondent remained ex parte before
the lower Court) ... Respondents/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 30 of Workman compensation Act, 1922 against the award passed in W.C.No.93 of 2012, dated 29.07.2013 on the file of Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai.

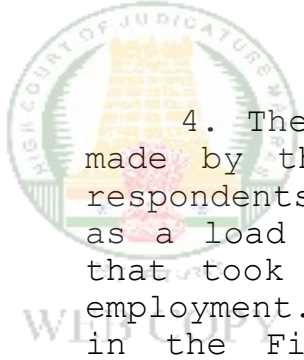
For Appellant : Mr.K. Bhaskaran
For Respondents 1 and 2 : Mr. C. Vakeswaran

JUDGEMENT

The Civil Miscellaneous Appeal is filed against the award passed in W.C.No.93 of 2012, dated 29.07.2013, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai.

2. The appellant is the second respondent and the respondents 1 and 2 are the petitioners in W.C.No.93 of 2012, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai.

3. The son of the respondents 1 and 2 died in the accident that occurred on 09.03.2013, while the deceased was working under the third respondent. The accident took place, during and in the course of employment. The vehicle of the third respondent insured with the appellant. Therefore, the respondents 1 and 2 filed W.C.No93 of 2012, claiming compensation of Rs.6,79,140/-, on the ground that their deceased son was earning a sum of Rs.5,000/- per month, as a cleaner, in the service of the third respondent. The third respondent remained ex parte before the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai.



4. The appellant filed counter denying the various allegations made by the respondents 1 and 2 and they have stated that the respondents 1 and 2 must prove that their deceased son was working as a load man with the third respondent and he died in accident that took place on 09.03.2012, during and in the course of his employment. The averments made in the petition and statements made in the First Information Report are different. In the First Information Report, it has been stated that the accident took place, only due to rash and negligent driving of the vehicle, which came behind the vehicle of the third respondent and hit the deceased. Therefore, only petition under Motor Vehicle Act is maintainable. The deceased travelled only as in gratuitous passenger. The respondents 1 and 2 must prove that they are the legal heirs of the deceased and they were the dependants of the deceased. The respondents 1 and 2 must prove that there was valid Insurance policy, for the vehicle of the third respondent and valid driving licence of the driver of the third respondent at the time of accident.

5. Before the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, the first respondent was examined as PW.1 and one Balamurugan was examined as PW.2 and marked 6 documents as Exs.A1 to A6. The appellant did not let in any oral or documentary evidence.

6. Considering all the materials on record, the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, held that the deceased was employed as a workman, under the third respondent and that the accident took place, during and in the course of employment and awarded a sum of Rs.6,82,442/-. The Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, was also held that at the time of accident, the vehicle of third respondent was insured with the appellant, as per Ex.A3. Against the said order, the appellant has filed the present appeal.

7. The learned counsel for the appellant contended that the deceased was and un-authorized passenger in the third respondent vehicle. The accident took place only due to rash and negligent driving of the driver of the another vehicle, which came from behind and hit the deceased, who died, due to the the said accident. The remedy available to the respondents 1 and 2 is only under Motor Vehicles Act and not under the provisions of Employees Compensation Act. The respondents 1 and 2 failed to prove that the deceased died due to the accident. The Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, was not correct in fixing the monthly income of the deceased at Rs.5,985/- per month. While the respondents 1 and 2 themselves have stated that the deceased was earning a sum of Rs.5,000/- per month, the amount awarded by the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, is excessive and therefore, prayed for allowing the appeal.



8. At the time of admission, the following substantial questions of law have been framed:-

1. Whether the injured was a "workmen" and the accident in question has "arisen in the course of employment" under the provisions of Workmen's Compensation Act?
2. Whether the deceased was a workman under Section 2(1) (n) of the Workmen's Compensation Act, 1923?
3. Whether the Deputy Commissioner of Labour is correct in holding that the defences available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 cannot be raised in a proceeding under Workmen's Compensation Act, 1923?

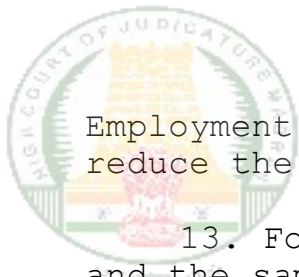
9. The learned counsel for the appellant reiterated the averments made in the appeal.

10. Per contra, the learned counsel for the respondents 1 and 2 contended that the deceased, son of the respondents 1 and 2 was employed, by the third respondent. The respondents 1 and 2 have proved this fact and also that the deceased died during and in the course of his employment. No substantial questions of law arising in this appeal and prayed for dismissal of this appeal.

11. Heard the learned counsel appearing for the parties.

12. The contention of the learned counsel for the appellant that the respondents 1 and 2 have examined PW.2, who was working along with the deceased. PW.2 has categorically stated that both the deceased and himself were working in the vehicle belonging to the third respondent. He has stated that they have loaded stones in the lorry and they were going to Virudhunagar and they stopped the vehicle near Kamaraj Engineering College and went to attend natural call. After attending natural call, when the deceased was about to get into the vehicle, another vehicle coming from behind and hit him and due to injuries suffered, he died. The appellant has not let in any contrary evidence of PW.2. Therefore, I hold that the deceased was a workman, as per Section (2) (1) of Tamil Nadu Employees Compensation Act and he died during and in the course of employment.

13. At the time of accident, the vehicle of the third respondent was insured with the appellant as evidenced by Ex.A3. Therefore, the appellant is liable to pay compensation to the respondents 1 and 2, as their son died, during and in the course of employment in the third respondent. For this reason, the contention of the appellant that, get that remedy available to the respondents 1 and 2, for compensation is under Motor Vehicles Act, is untenable. The petition filed before the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, is maintainable. The substantial questions of law framed by this Court is answered. Accordingly, the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, has fixed monthly income of the deceased as per G.O.No.64, (Labour and



Employment Department), dated 23.7.2009. There is no necessity to reduce the income from Rs.5,985/ - to Rs.5,000/-.

13. For the above reasons, the Civil Miscellaneous Appeal fails and the same is dismissed and the award passed by the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Madurai, in W.C.No.93 of 2012, dated 29.07.2013, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour), Madurai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.K.BHASKARAN, ADVOCATE SR NO.35854

+ 1 CC TO MR.C.VAKEESWARAN, ADVOCATE SR NO.35944

TRP

TE:18/08/2015 : 4P/5C

C.M.A.(MD) No. 1625 of 2013 and
M.P.(MD).No.1 of 2013
03.07.2015