

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1977 of 2016

M/s United India Assurance Company Limited

No.134, Greams Road

Chennai 600 006

.. Appellant/Ind Respondent

-vs-

1. Thirumathi.Panjavarnam

2. Thiru.Ponnuvel

3. Thiru K.Nirmal Kumar .. Respondents/1 & 2nd petitioner
and 1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 30 of the Employees Compensation Act, 1923, against the final award dated 04.03.2016 made in E.C.No.320 of 2012 on the file of the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II), Chennai.

For Appellant :: Mr.J.Michael Visuvasam

JUDGMENT

M/s United India Assurance Company Limited, Chennai has questioned the impugned award passed in E.C.No.320 of 2012 by the Deputy Commissioner of Labour-II, Chennai under the Employees Compensation Act, awarding a sum of Rs.7,04,842/-, on the ground that when the factum of "employee" and "employer" between the deceased and the third respondent-K.Nirmal Kumar, under whom the deceased is said to have worked, was not established at any point of time, the lower authority ought not to have accepted the claim for payment of compensation. Adding further, the learned counsel for the appellant has submitted that the entire award has been passed on the premise that when the so called employer, namely, the third respondent-K.Nirmal Kumar had failed to respond to the summons issued by the authority under the Employees Compensation Act by filing his counter affidavit, it has been held that the relationship of "employee" and "employer" has been established between the deceased and the third respondent and consequently the appellant

insurance company, being the insurer of the vehicle, has been mulcted with the compensation of Rs.7,04,842/- based on a collusive prayer. Hence he submitted that the impugned order is liable to be interfered with.

2. This Court does not find any merit in his submissions. The reason is that the First Information Report registered on 1.6.2012 before the Acharapakkam Police Station in Crime No.195 of 2012 clearly shows that the deceased died while he was driving the Mahendra Maxi Truck bearing Registration No.TN 31 AC 3391 belonging to the third respondent and the appellant is the insurer of the said vehicle. Sadly, in the present case, even after receipt of summons from the authority on the claim petition filed by the respondents 1 & 2/claimants, the third respondent deliberately remained absent. When the authority under the Employees Compensation Act has found that the deceased died in the accident during the course of employment under the third respondent and that the appellant has also failed to establish before the authority that there was no relationship of "employee" and "employer" between the deceased and the third respondent, the authority under the Employees Compensation Act, in law, is right in proceeding against the third respondent on the question of accepting the case of the claimants that there was a relationship of "employee" and "employer" between the deceased and the third respondent. While so, the appellant insurance company cannot come and say that there was no relationship of "employee" and "employer" between the deceased and the third respondent, when the appellant has miserably failed to establish the said fact before the lower authority. Moreover, when the fact of death of the son of the respondents 1 & 2 has been accepted by the authority under the Employees Compensation Act on the basis of registration of First Information Report dated 1.6.2012 for the offence under Sections 279 & 304-A IPC, the vicarious liability saddled with the appellant insurance company cannot be discarded. Accordingly, finding no grounds to interfere with the impugned award, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.14259 of 2016 is also dismissed. It is open to the respondents 1 & 2/claimants to withdraw the entire award amount by moving appropriate application before the lower authority.

sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ss

To

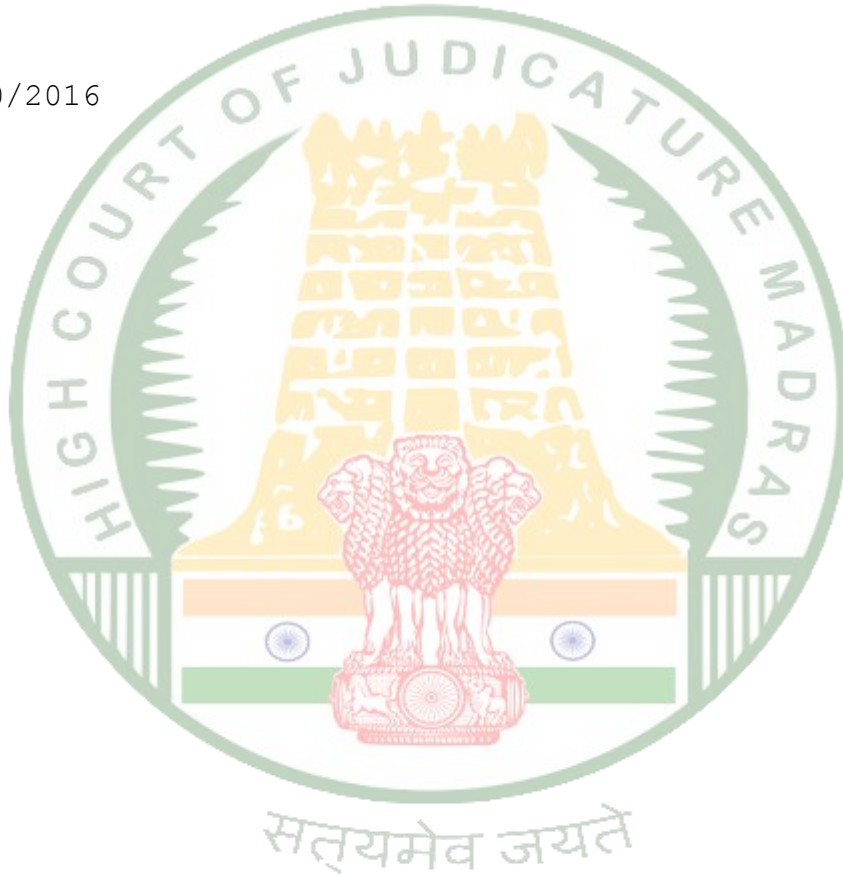
1. The Deputy Commissioner of Labour-II
Commissioner for Employees Compensation
Chennai

+1 CC J. Michael Viswasam, Advocate Sr.No.53420 (4/11/2016)

C.M.A.No.1977 of 2016

SR (CO)

MD : 22/10/2016



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