

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.NPD.No.518 of 2002

and

C.M.A.No.1365 of 2002

M/s.United India Insurance Co. Ltd.,
near Mithila Hostel,
Salem.

.. Appellant in C.M.A.
No.518of 2002/ Appellant/ Petitioner

1. Subetha Begham
2 Minor Aashik
3.Minor Abithaa
4. Beema
(2nd and 3rd minor appellants are
rep. By her mother
natural guardian Subetha Begham)

... Appellants in CMA
NO. 1365 of 2002 / Applicants
Versus

1.Krupa
2.Merry
3.Minor Ragul
4.Minor Rajinikumar
5.Minor Rabinkumar
(Minors are represented by
2nd Respondent herein)
6. A.Selvaraj

... Respondents in
C.M.A.No.518 of 2002 /
Applicants I Opposite Party

1.G.Selvaraju
2.United India Insurance Company Ltd.
Branch Office, Namakkal.

... Respondents in
C.M.A.No.1365 of 2002 /
Opposite Parties

Prayer in C.M.A. No.518 of 2002 :Civil Miscellaneous Appeal
filed under Section 30 of Workmen Compensation Act against the
order dated 20.09.2001 made in I.A.No.21 of 2001 in WC No.169 of
2000 on the file of the Commissioner for Workmen Compensation
(Deputy Commissioner for Labour) at Salem.

Prayer in C.M.A. No.1365 of 2002 : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act against the order passed by the Court of the Commissioner for workmen's compensation and Deputy Commissioner of Labour, Salem Region, Salem in W.C.No.517 of 2000, dated 12.03.2001

Appellant : Mr.T.Ravichandran
Respondents: Mr.D.Bharathchakravarthy for RR1 to 5

COMMON JUDGEMENT

CMA No.518 of 2002 has been filed against the order dated 20.09.2001 made in I.A.No.21 of 2001 in WC No.169 of 2000 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner for Labour) at Salem. By the said order dated 20.09.2001, the Commissioner for Workmen's Compensation refused to review his own order at the instance of the insurance company on the ground that he has no power or authority to review his own order when it was passed on merits. The said application in I.A. No.21 of 2001 has been filed by the insurance company stating that they have paid a sum of Rs.1,00,000/- to the legal heirs of the deceased on 07.09.2000 in excess as against the award of Rs.2,11,790/- awarded by the Commissioner on 08.01.2000. Therefore, the insurance company prayed the Deputy Commissioner to deduct the sum of Rs.1,00,000/-, which the insurance company already settled to the legal heirs of the deceased on 07.09.2000 by reviewing the award 08.01.2000.

2. C.M.A.No.1365 of 2002 filed by the legal representatives of the Mahaboob Basha questioning the correctness of the quantum of the award passed by the Commissioner for Workmen Compensation awarded a sum of Rs.97,060/- in their favour and consequently seek for enhancement of the compensation amount.

3. On the application filed by the claimants, the learned Commissioner, upon appreciating the materials placed on record, calculated and fixed the income of the deceased as Rs.3,000/- per month and finally determined the notional income as Rs.2,000/- and considering the age of the deceased at the time of accident as 35 years, arrived a sum of Rs.1,97,060/- as compensation and after deducting Rs.1,00,000/- paid under personal accident coverage, the Commissioner directed the opposite party to pay Rs.97,060/- with interest. Aggrieved against the order of the Workman Commissioner, the appeal in C.M.A.No.1365 of 2002 is filed by the claimants.

4. The learned counsel for the claimants vehemently contended that the trial Court, erroneously, came to a conclusion and deducted Rs.1,00,000/- paid under personal accident coverage. Hence, the order passed by the Commissioner has to be set aside and the amount deducted by the Commissioner has to be paid to the appellants and the quantum fixed by the Commissioner is very low. Hence, prayed for Rs.3,00,000/- as compensation to the appellants.

5. The learned counsel for the respondents fairly conceded that the compensation paid under the personal action coverage should not be deducted from the compensation arrived. Hence, this Court is of the view that the citation is squarely applicable to the facts of the present case. The Trial Court correctly fixed the age and income of the deceased and arrived just compensation of Rs.1,97,060/- but erroneously deducted Rs.1,00,000/- from the compensation amount paid under the personal action coverage. Hence, this Court is of the considered view that the opposite party is directed to pay Rs.1,97,060/- as arrived by the Trial Court and directed the opposite party to pay the interest amount as per Section 4-A of the E.S.I. Act from the date of accident till the date of deposit.

6. CMA No.518 of 2002:-

This appeal is filed by the insurance company questioning the correctness of the award passed by the Commissioner on 20.09.2001. By the said award dated 20.09.2011, the Commissioner refused to entertain the review application filed by the insurance company. According to the insurance company, they have paid excess amount as compensation to the legal heirs of the deceased Rajan @ Jebaraj and therefore the award passed by the Commissioner is liable to reviewed. In this context, the insurance company relied on the Judgment of the Hon'ble Supreme Court reported in (Oriental Insurance Co. Ltd vs. Sunita Rathi) CDJ 1997 SC 28. In the decision of the Honourable Supreme Court, it was held that as per the terms and conditions of the policy, it is the owner, who is liable to pay the compensation and not the insurance company. This decision rendered by the Honourable Supreme Court cannot be made applicable to this case. In this case, the insurance company contends that they have paid excess amount of Rs.1,00,000/-. While seeking for review of the award, the insurance company, inter alia questioned the very award passed by the Commissioner by contending that it is the first respondent/owner of the vehicle, who is liable to pay the compensation amount.

7. Admittedly, there is no provision under the Motor Vehicle Act to review the award passed by the Commissioner. The insurance company also did not quote any provision of law seeking a review of the award passed by the Commissioner. The

entire claim of the insurance company in this appeal rest on the applicability or otherwise of the Judgment passed by the Hon'ble Supreme Court in that case before the Supreme Court the stand of the insurance company is that they are not liable to pay the amount and it was the owner of the vehicle, who has to pay the compensation amount. Admittedly, the insurance company did not question the award passed by the Commissioner rather only sought for review of the award passed by the Commissioner. As mentioned above, the ratio laid down in the above decision by the Honourable Supreme Court cannot be made applicable to the facts of the present case. At any rate, I do not find any reason to interfere with the award passed by the Commissioner and rejecting the application submitted by the insurance company for reviewing the award.

8. Therefore, the review application filed by the insurance company is not maintainable in law and on fact also this Court finds that there is no illegality or irregularity in the order of the trial court and the review application filed by the appellant has to be dismissed. Hence, the appeal filed by the appellant is liable to be dismissed.

9. In the result,

(i) C.M.A.No.1365 of 2002 is partly allowed directing the insurance company to pay Rs.1,97,060/- along with interest at 12% per annum after the expiry of one month from the date of accident till the date of deposit. In other respect, the Trial Court award is confirmed. No costs.

(ii) C.M.A.NPD.No.518 of 2002 is dismissed. No costs.

sd/-

Assistant Registrar

// True copy //

Sub Assistant Registrar

To
The Commissioner for Workmen Compensation
(Deputy Commissioner for Labour) at Salem.

+ 2CC to Mr. T. Ravichandran Advocate SR No. 69082 69081
+ 1CC to M/s D. Bharatha Chakravarthy Advocate SR No. 69123
+ 1CC to M/s. V. Balaji Advocate SR No 69038

C.M.A.NPD.No.518 of 2002
and
C.M.A.No.1365 of 2002

UG (CO)
AK (30/12/2016)



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