

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.11.2016
Pronounced on : 15.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.3687 of 2004
and C.M.P. No.19815 of 2004

M/s.Royal Sundaram Alliance
Insurance Co. Ltd.
No.46, Whites Road,
Chennai - 600 014.

...Appellant

Versus

1.Smt. Pushpa
2.M.Selvam, Minor
3.M.Mala ***
4.M.Rani, Minor
5.M.Kalaivani, Minor
6.Kamalammal
7.S.Prabhu

...Respondents

** Respondents 2,4 and 5 , Minors are all represented by mother and next friend 1st respondent Pushpa, vide Order of Court dated 09.03.2005 made in C.M.P. No.3690 of 2005.

*** 3rd Respondent declared as major and 1st respondent discharged from the guardianship of the 3rd respondent vide order of Court dated 25.09.2007, made in CMP. No.993 of 2007 in CMP No.3687 of 2004.

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against the Order dated 01.10.2004 made in W.C.No.18 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - I) at Chennai - 6.

Appellant : Mr.R.Sreevidhya
Respondents : Mr.T.G.Balachandran for RR1 to 6
R7-Served

JUDGEMENT

The insurance company has come forward with this Civil Miscellaneous Appeal challenging the award dated 01.10.2004 passed in W.C.No.18 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - I) at

Chennai - 6. The said W.C.No.18 of 2004 was filed by the respondents 1 to 6 herein contending that on 02.11.2003 the husband of the 1st respondent namely D. Mahalingam was employed as a Driver in the lorry owned by the 7th respondent herein, bearing Registration No.TN02 B 6070. During the course of such employment, when the deceased was driving the lorry in Chinnamandali village, Tiruvallur district, he suffered a massive cardiac pain and he died during the course of employment with the 7th respondent. According to the claimants 1 to 6/ respondents, at the time of the death of the deceased, he was drawing Rs.4,000/- per month as wages apart from Rs.50/- per day as batta. It is also claimed that as the deceased died during the course of employment as a Driver with the 7th respondent herein and the vehicle was insured with the appellant herein, both the 7th respondent and the appellant are jointly and severally liable to pay compensation. Accordingly, the claimants / respondents 1 to 6 herein have filed the claim petition claiming a compensation of Rs.5,00,000/- for the death of the deceased.

2. The claim petition was resisted by the first respondent /7th respondent herein by contending that he is the owner of the lorry and the deceased was employed by him. However, the lorry was insured with the appellant insurance company and the policy was in force at the time of death of the deceased. It is the appellant /insurance company, which has to pay the compensation to the respondents 1 to 6 /claimants.

3. The insurance company has filed a counter affidavit before the Commissioner contending that the claim petition as against the insurance company is not maintainable when the deceased died during the course of employment with the 7th respondent due to cardiac arrest and his death has not occasioned due to any motor accident. The insurance company is not liable to pay any amount as compensation to the claimants. It is also submitted that the deceased did not suffer any cardiac arrest while driving the vehicle, as alleged, rather he slept while he was driving the vehicle due to excessive work. It is further contended that in such circumstances, the insurance company has been unnecessarily impleaded as party to the claim petition and the claim petition before the Commissioner is legally unsustainable.

4. The Commissioner, on appreciation of the role and documentary evidence concluded that the deceased died during the course of the employment with the 7th respondent herein. Further at the time of his death, the deceased was 34years and was in receipt of Rs.4,000/- as monthly salary, apart from Rs.50/- towards daily batta. Therefore, the Commissioner by applying the factor 199.40 and taking into consideration, the age of the

deceased at 34 and the remuneration, which he received at the time of death at Rs.4,000/- arrived at Rs.3,98,800/- as compensation and it was directed to be paid by the insurance company on its own behalf on behalf of the 7th respondent herein. Aggrieved by the same, the insurance company has come up with this Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant mainly argued that there was no nexus or connection between the insurance company and the deceased much less any jural relationship. Therefore, the Commissioner ought not to have entertained the claim petition against the insurance company. It is mainly contended on behalf of the insurance company at the time of death of the deceased, he was 43 years old and it could be evident from the postmortem certificate, ration card as well as the legal heir certificate issued to the claimants/respondents 1 to 6 herein. In the postmortem report, it is clearly stated that the deceased was aged around 43 years. Therefore, the quantum of compensation arrived by the Commissioner is liable to be interfered with.

6. At the time of admission of this Civil Miscellaneous Appeal on 13.12.2004, the following substantial questions of law have been framed for consideration and they are :-

"1. Whether the learned Commissioner has failed to note that there was no nexus between the accident and the employment and failed to appreciate the Ruling of Apex Court reported in 1996 ACJ 1281, especially 29 of the Judgment?

2. Whether the learned Commissioner has failed to note that the deceased had no earlier history of any heart disease, nor he was working or undergoing some strain or stress connected with his occupation to cause any chest pain or cardiac arrest and such the claim falls outside the scope of Policy?

7. Admittedly, the deceased was employed as a Driver under the seventh respondent herein. The vehicle in which the deceased was employed as Driver was insured with the appellant insurance company. The policy in respect of the vehicle in question was in force at the time of death of the deceased. Therefore, when it is admitted that the deceased was employed as a driver in the vehicle, definitely, the insurance company is liable to pay compensation for the death of the deceased. Even though it is contended on behalf of the deceased that the deceased died due to excessive work and he did not suffer any cardiac arrest, as claimed by the claimants, there is no evidence forthcoming to prove the same. In the absence of any

evidence to the contra, it has to be held that the deceased died due to cardiac arrest when he was on the wheels of the vehicle as a Driver.

8. The learned counsel appearing for the appellant relied on the decision of the Honourable Supreme Court in (Employees State Insurance Corporation vs. Francis De Costa) 1996 ACJ 1281 to contend that there is no employer - employee relationship between the deceased and the seventh respondent -employer. In that case before the Honourable Supreme Court, the workman therein, while proceeding in his bicycle to his workplace met with an accident at around 4.15 p.m. and died on the spot, whereas his shift or work begins only at 4.30p.m. In such circumstance, it was held that the deceased in that case has not died during the course of his employment. The facts of this case are distinguishable. In this case, admittedly, the deceased died during the course of his employment when he was driving the vehicle in question. Therefore, I hold that the decision relied on by the counsel for the appellant has no application to the facts of this case. Therefore, the questions of law framed in this appeal are answered against the appellant and in favour of the claimants / respondents 1 to 6 herein.

9. Even though the insurance company did not question the quantum of compensation or any question of law has been framed relating to the same, it is contended on behalf of the appellants that the Commissioner erred in taking the age of the deceased as 34 for determining the compensation which is contrary to the postmortem certificate, ration card and legal heir ship certificate. According to the counsel for the appellant, at the time of death of the deceased, he was 43 years and this was not properly considered by the Commissioner.

10. I considered the submission of the learned counsel for the appellant and perused the materials on record. In the ration card issued to the deceased during the year 1998 to 2003, the age of the deceased was indicated as 36. The accident took place on 02.11.2003. Therefore, at the time of his death, the deceased would have been aged 41. Further, in the legal heir certificate issued on 21.06.2004, the age of the first respondent, which is the wife of the deceased, was indicated as 35 years. The age of the eldest son of the deceased, who is the second respondent herein, was indicated as 17 years. Therefore, the age of the deceased mentioned as 43 at the time of the accident is not propable. Further, in the postmortem certificate, the age of the deceased is mentioned as 43 years. Thus, the probable age of the deceased can be reckoned as 41 and

the Commissioner has failed to take note of this aspect. If the age of the deceased is taken as 41 years, the claimants/respondents 1 to 6 herein are entitled for payment of compensation as determined below :-

Age of the deceased	:	41
Factor or Multiplier	:	175.50
Monthly income	:	Rs.4,000/-

50
---- x 175.50 x 400
100
= Rs.3,51,000.00

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified. The claimants / respondents 1 to 6 are entitled for a sum of Rs.3,51,000/- as compensation as against the sum of Rs.3,98,800/- awarded with interest as awarded by the Commissioner. The Insurance company is directed to deposit the modified amount of compensation to the credit of W.C.No.18 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - I) at Chennai - 6 within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the compensation amount as apportioned by the Commissioner. Consequently, CMP No.19815 of 2004 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour - I)
Chennai - 6.

+1cc to Mr.Balachandar, Advocate, S.R.No.73375
+1cc to Ms.Shree Vidhya, Advocate, S.R.No.73818

NRJ(CO)
RS(16/02/2017)

Judgment in
C.M.A.No.3687 of 2004