

Reserved on : 20.11.2017
Delivered on : 27.11.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.1074 of 2015 and
M.P.No.1 of 2015 & C.M.P.No.17507 of 2016

Management

The Oriental Insurance Co. Ltd
Divisional Office-3
Coimbatore Indian Life Building
Post Box No.3821, Coimbatore-18

... Appellant

v.

- 1.A.Anitha
- 2.Sudesh
- 3.Aswini
- 4.V.Krishnan
- 5.Management

Jenny Residency
executive Manager No.2/2
Avinasi Salai, Coimbatore -14

- 6.Sairam Enterprises
Represented by its Proprietor
C.Anandakrishnan
Door No.89/102, Kamarajar Nagar
2nd Street, Ramanathapuram
Coimbatore -15.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923 against the order dated 16.04.2015 made in E.C. Case No.101 of 2011 on the file of Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore.

For Appellant : Mr.S.Manohar

For Respondents : Mr.P.Saravanan - for R1 to R4
Mr.K.C.Karlmark - for R6
No appearance - for R5

J U D G M E N T

Challenging the order passed in E.C. Case No.101 of 2011 on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore, the Insurance Company has filed the above Civil Miscellaneous Appeal.

2. The respondents 1 to 4/claimants filed E.C. Case No.101 of 2011 claiming a sum of Rs.10,00,000/- as compensation for the death of one Anand.

3. The 1st respondent is the wife of late Anand, respondents 2 and 3 are the son and daughter respectively of late Anand and the 4th respondent is the father of the deceased.

4. The brief case of the claimants/respondents 1 to 4 is as follows:

(i) According to the claimants, the deceased Anand was working as Septic Tank Cleaner and his wage was fixed at Rs.400/- per day and earned a sum of Rs.10,000/- per month. He was working under the 6th respondent. For cleaning the Septic Tank in the 5th respondent premises, they engaged the 6th respondent, who in turn, engaged the deceased Anand and 3 others for cleaning the Septic Tank. At the time of cleaning the Septic Tank, the respondents 5 and 6 did not take any precautionary measures and provided safety equipment to Anand and 3 others, who were assigned to the work of cleaning the Septic Tank on 22.02.2011 at about 2.00 a.m. The said Anand died at about 2.15 a.m. on 22.02.2011.

(ii) According to the claimants, at the time of death of the said Anand, he was 24 years. The vehicle belonging to the 6th respondent was insured with the appellant. In these circumstances, the claimants filed the claim petition claiming compensation of Rs.10,00,000/-.

5. The brief case of the appellant is as follows:-

(i) According to the appellant, the Insurance policy was issued to the 6th respondent pertaining to the Tanker Lorry bearing Registration No.TN66 8879. However, no additional premium was paid by the 6th respondent towards the persons employed in loading and unloading operations. Therefore, there is no question of indemnifying the insured arises. Further, the appellant has stated that the sewage of Septic Tank is sucked through electric motor attached to the Tanker under the Hydraulic System and poured out through the valves in the tanker. It is an automatic process of load by suction and pour out and involves no manual work. The Septic Tank cleaning does not involve any process of loading or unloading and hence, the

deceased does not fall under the category of load man. The co-worker Ashok is alleged to have fallen in the Septic Tank and the deceased Anand has stepped into the tank to save him.

(ii) As per the Employment of Manual Scavenges and Construction of Dry Latrine (Prohibition) Act, 1993, no person is supposed to get into the Septic Tank. The incident did not take place in the course of employment. As per the provisions of the Workmen's Compensation Act, the death must be caused by an accident arising in the course of employment. The 5th respondent has not taken any safety measures to protect the workers. If proper safety measures and instruments had been provided by the persons in charge, the accident could have been avoided. Therefore, the 5th respondent is responsible to answer the claim.

6. The brief case of the 6th respondent is as follows:-

The 6th respondent is the owner of the lorry bearing Registration No.TN 66 8829 used for the purpose of transporting the sewage taken from the Septic Tank. The vehicle was insured with the appellant/Insurance Company. In the event of the Tribunal coming to the conclusion that the claimants are entitled for compensation, in that case, only the Insurance company is liable to pay the compensation. There is no employer and the employee relationship between the Anand and the 6th respondent.

7. The 5th respondent remained absent before the Deputy Commissioner of Labour.

8. The Deputy Commissioner of Labour, taking into consideration the oral and documentary evidences let in by the parties, awarded a sum Rs.8,73,880/- as compensation together with interest at the rate of 12% per annum.

9. Heard Mr.S.Manohar, learned counsel appearing for the appellant, Mr.P.Saravanan, learned counsel appearing for the respondents 1 to 4 and Mr.K.C.Karlmark, learned counsel appearing for the 6th respondent.

10. Mr.Mr.S.Manohar, learned counsel appearing for the appellant/ Insurance Company submitted that since the vehicle was stationary and was not involved in the accident and that there is no proximate or direct connection with the vehicle, the insurance company is not liable to pay any compensation. In support of his contentions, the learned counsel for the appellant/Insurance Company relied upon a judgment reported in 2010 ACJ 2661 [Mamta] Bi Bapusab Nadar and others v. United India Insurance Co. Ltd. And others] wherein the Apex Court held as follows:

" 10. Learned counsel for the appellants has also placed reliance on a Division Bench judgment of the Karnataka High Court delivered on 24th February, 2006 in M.F.A. No.1870/2005 (WC). In that case, the workman who was working as a loader, went in the lorry and loaded the lorry with stones and thereafter he was required to unload the same close to the Crusher near the quarry along with other loaders. At about 2.30 p.m. in the afternoon, the deceased workman got down from the lorry in order to unload the stones along with other loaders and when they opened the lock at the hind portion of the lorry, the entire load of stones in the lorry fell on him, as a result of which he sustained injuries and succumbed to the injuries on the spot. In this case, the vehicle was directly involved in the unfortunate accident.

11. Both the above-mentioned cases relied on by the learned counsel for the appellants are of no avail to him. These cases do not help the appellants in any manner.

12. Learned counsel for the Insurance Company has placed reliance on the Explanation to Section 147(1) of the Motor Vehicles Act, 1988, which reads as under:
"147. Requirements of policies and limits of liability.-
(1) In order to comply with the requirements of othis Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability. Explanation: For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

13. According to the learned counsel for the respondents, on a plain reading of the above quoted Explanation, the Insurance Company cannot be held liable for the death of the workmen and therefore, the Insurance Company cannot be held liable to pay compensation to the appellants. "

11. Countering the submissions made by the learned counsel for the appellant/Insurance Company, learned counsel appearing for the respondents 1 to 4/claimants submitted that the Tribunal has rightly considered all the aspects and awarded the compensation.

12. On the side of the claimants, the First Information Report dated 22.02.2011 was marked as Ex.P1. From the First Information Report, it is clear that the 6th respondent had engaged the deceased Anand and 3 others for cleaning the Septic Tank and that they were brought to the 5th respondent campus by one Anandakrishnan and Bharatkumar for the said purpose. From the reading of the First Information Report, it is clear that the deceased was employed by the 6th respondent for cleaning the Septic Tank in the campus of the 5th respondent. The evidence of

P.W.1 and also Ex.P1 would clearly establish that the deceased was employed by the 6th respondent. That apart, the First Information Report was registered at 3.30 a.m. on 22.02.2011 and the deceased had died at 2.15 a.m. and within 1 hour 15 minutes, the First Information Report has been registered with the Police. Therefore, one cannot contend that the averments stated in the First Information Report are after thought or fabricated for the purpose of maintaining the claim petition. Therefore, the Deputy Commissioner has rightly come to the conclusion that the deceased was employed with the 6th respondent and there is employer and employee relationship between the 6th respondent and the deceased.

13. The contentions of the learned counsel appearing for the appellant cannot be accepted for the reason that the deceased was employed by the 2nd respondent for cleaning the Septic Tank. The lorry which is meant for cleaning the Septic Tank will not clean the Septic tank on its own. It requires a human assistance for operating the motor and other sucking pipes. Therefore, it cannot be said that the workmen did not have any direct connection with the vehicle.

14. As already stated, the vehicle was meant for cleaning the Septic tank attached with motor and other pipes and it requires a workman's assistance for operating the machinery. Therefore, the judgment relied upon by the appellant is not applicable to the present case.

15. As per the evidence of P.W.1, the deceased was earning Rs.10,000/- per month and he was aged 24 years as per Ex.P2, Post Mortem report and Ex.P4, death certificate. Neither the appellant nor the respondents 5 and 6 were able to disprove the evidence of P.W.1 with regard to the income of the deceased, hence, the Deputy Commissioner of Labour relying upon section 4 (1) (B) of the Workmen's Compensation Act and the Central Government Order S.O.1258(E), dated 31.05.2010, fixed the monthly income of the deceased at Rs.8,000/-. Calculating the compensation as per the Workmen's Compensation Act, the Deputy Commissioner fixed the total compensation at Rs.8,73,880/-. Since the claimants have established that the deceased was working under the 6th respondent and that the vehicle owned by the 6th respondent was insured with the appellant, passed the award in favour of the claimants directing the appellant-Insurance company to pay the compensation.

16.For the reasons stated above, I do not find any ground much less any substantial question of law to interfere with the order passed by the Deputy Commissioner of Labour, Coimbatore. The appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

1. The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour)
Coimbatore.
2. The Oriental Insurance Co. Ltd
Divisional Office-III
Coimbatore Indian Life Building
Post Box No.3821, Coimbatore-18

+1cc Mr.S.Manohar, Advocate, in sr.no.84119
+1cc Mr.K.C.Karlmark, Advocate, in sr.no.84009
+1cc Mr.P.Saravanan, Advocate, in sr.no.84269 (19.01.2018)

C.M.A.No.1074 of 2015 and
M.P.No.1 of 2015 & C.M.P.No.17507 of 2016

RR(CO)
CS/04/01/18

सत्यमेव जयते

WEB COPY