

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.807 of 2017 and
C.M.P.No.4166 of 2017

United India Insurance Company Limited,
Divisional Officer,
2, Dr.Sankaran Road,
Namakkal. Appellant

//vs//

1. K.Palani
2. K.Mani Respondents

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 31.12.2003 received by the appellant on 13.02.2004 passed in W.C.No.302 of 2002 on the file of the Commissioner for Workmen's Compensation, Salem-7.

For Appellant : Mr.T.Ravichandran
For 1st Respondent : Mr.M.Aniruthan
2nd Respondent : Not ready in Notice

J U D G M E N T
सत्यमेव जयते

Challenging the liability and quantum of compensation awarded by the Commissioner for Workmen's Compensation, Salem, in W.C.No.302 of 2002 dated 13.02.2004, the appellant Insurance Company has filed this Civil Miscellaneous Appeal.

2. The case of the claimant/1st respondent herein is that on 14.02.2002 at about 01.00 p.m., the deceased, who was the son of the claimant, was drilling the bore well by using the Bore Machine TAL/4041 at Yetigaddar Kistapur, Kondapak Taluk, Medak District in U.P. State. At that time, due to vibration from the Rig Machine, the current motor in the agricultural Well has fallen on the head of Balu due to which he sustained grievous injuries and succumbed to the same. Since the said accident had

occurred during the course of his employment as Load Man and Driller in the Borewell Lorry bearing Registration No.TAL 4041 and as he was getting the salary of Rs.5,000/- per month, the claimant has filed a Claim Petition claiming compensation of Rs.5,00,000/- from the owner of the Bore Well Lorry and the Insurer of the Bore Well Lorry.

3. A Counter affidavit and an additional Counter affidavit have been filed by the 2nd respondent Insurance Company disputing the claim made by the claimant. According to them, the deceased is not a trained driller and he has not taken any precautionary steps to avoid the accident. Further, according to the Insurance Company, the accident which arose due to the fall of the electric motor is not an accident which arose directly out of the vehicle insured. Hence, prayed for dismissal of the claim petition.

4. On the side of the claimant, the petitioner himself was examined as P.W.1 and on his side, as many as, 3 documents have been marked and on the side of the 2nd respondent Insurance Company, one Mr.M.Sankara Narayanan was examined as D.W.1 and as many as one document, namely, a copy of Insurance Policy was marked as Ex.D.1.

5. The Commissioner of Workmen's Compensation, on considering the oral and documentary evidences of both sides, has held that the deceased comes under the category of 'workman' and the death was due to the sudden fall of the electric motor which has happened due to the vibration came from the operation of the Rig Lorry Unit. Accordingly held that the 1st respondent is liable to pay the compensation to the claimant, who in turn, insured his lorry with the 2nd respondent, the 2nd respondent is liable to pay the same to the claimant.

6. While calculating the monthly income of the deceased, the Commissioner of Workmen Compensation has taken his monthly income as Rs.2,699.56p as per G.O.No.2D, Labour and Employment Department, dated 22.09.1999 and arrived at a compensation of Rs.3,00,610/- by taking into consideration the factor as 222.71 for 21 years and the fact that there is a possibility of the deceased living for another 50 years (Rs.2,699.56 x 50 x 222.71/100). Aggrieved over the same, the present appeal came to be filed by the 2nd respondent Insurance Company.

7. The matter is listed today under the caption, 'for adjourned admission.'

8. Heard both sides and I have also perused the materials available on record carefully including the award of the Commissioner for Workmen's Compensation, Salem.

9. On the face of the award, it appears that before awarding the compensation, the Commissioner has clearly held that the employment of the deceased with the 1st respondent comes under the category of 'workman' as per the Workmen's Compensation Act and the death was because the electric motor fell on him due to the vibration of the Rig Machine while he was at work and accordingly fixed the liability. Further, though no certificate has been produced to prove the age of the deceased, the Commissioner has taken his age at 21 based on the Postmortem Certificate and fixed his salary as Rs.2,699.56 as per G.O.(2D) 102 Workmen and Employment Department, dated 22.09.1999 and calculated the compensation as $2699.56 \times 50 \times 222.71/100 = \text{Rs.}3,00,609.50\text{p}$ rounded to Rs.3,00,610/-. I find no error in the said award and there is no substantial question of law arising out of the said fact for consideration.

10. In the result, the Civil Miscellaneous Appeal is dismissed at the stage of admission itself thereby confirming the award of the Commissioner of Workmen's Compensation, Salem. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the entire amount of compensation, if not deposited earlier, within a period of four weeks from the date of receipt of a copy of this Order and in case of default, to pay interest at 12% p.a. from the date of petition, till the date of deposit and on such deposit being made, the claimant is permitted to withdraw the same.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

tsi

To
The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour), Salem-7
+lcc to T.Ravichandran, Advocate sr.18454
+lcc to M.Aniruthan, Advocate sr.18409

CMA.No.807 of 2017

gm1 (co)
ss (11/4/2017)