

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.916 of 2017
& CMP No.4543 of 2017

National Insurance Company Limited,
No.751 Anna Salai, Chennai 600 002 Appellant

..Vs..

1. Tmt. Hemalatha
2. Thiru. Narayanan
3. Thiru R.Ragababu ... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Award, dated 18.10.2004, made in W.C.No.121 of 2004 on the file of the Commissioner for Workmen's Compensation Court 2 / Deputy Commissioner of Labour-2, DMS Compound, Chennai - 6.

For Appellant : Mr. S.Vadivel
For Respondents : R-1 & 2 -NDW;
R-3-No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed, raising the following substantial questions of law:-

(a) Whether the learned Deputy Commissioner of Labour 2 Chennai 6 is right in holding that there was employer employee relationship between the first respondent and the deceased, simply because no contra evidence was let in by the appellant or the 2nd respondent?

(b) Whether the Deputy Commissioner of Labour 2 Chennai 6 is right in shifting the onus of proving the employer employee relationship between the deceased and the 2nd respondent on the appellant, instead of the first respondent without assigning any valid reasons for holding that the deceased was an employee under the 2nd

respondent?

(c) Whether the Deputy Commissioner of Labour 2 Chennai 6 is right in fixing the salary of the deceased on the basis of the Minimum Wages Act, when admittedly the applicant failed to prove the salary of the deceased?

(d) Whether the Deputy Commissioner of Labour 2 Chennai 6 is right in allowing the application filed by the first respondent even after bringing to his notice that a M.C.O.P. was filed by the first respondent for the death of the deceased against the Oriental insurance Co. Ltd?"

2. This Appeal has been filed by the Insurance Company, challenging the award, dated 18.10.2004, made in W.C.No.121 of 2004 on the file of the Commissioner for Workmen's Compensation Court 2 / Deputy Commissioner of Labour-2, DMS Compound, Chennai - 6.

2.1. The parents, namely, Hemalatha and Narayanan filed a claim petition before the Deputy Commissioner of Labour, Chennai. The deceased Babu has been employed as a driver under the third respondent (in the appeal).

3. It was the claim of the parents that the deceased had been employed under the third respondent herein, but it was disputed by the third respondent as well as by the appellant. The question raised is, just because no oral evidence has been adduced by the third respondent and the appellant, whether the Tribunal can give a finding that there exists employer and employee relationship between the deceased and the third respondent herein.

3.1. Whether this question is justified is the issue to be considered.

3.2. It is common knowledge that in private sector and unorganized sector, no documents are maintained. But, in some sectors there are statutory requirement to maintain some basic records at least. The best evidence available must always be made available to the Court and it is the duty of the parties to ensure the same. But, in this case, the owner as well as the Insurance Company did not produce any document. The owner is expected to have some documents showing the list of employees under him, the EPF contribution, if any, salary payment register, etc., But, no document is forthcoming. Even if there are no documents, the evidence on the side of the owner must be made available for putting and testing the statement for cross-examination to elicit the truth. Even oral evidence has not been adduced. The non-production of the evidence would lead to drawal of adverse inference. Observing that, there was no oral

or documentary evidence, on the side of the second respondent, to the effect that the deceased was not employed under the second respondent, but there are other evidence to prove the relationship of the employer and the employee, the Tribunal has given a finding that the accident took place while the deceased had been employed under the second respondent, as Auto Driver.

3.3. Even though it was the claim of the claimant's family that the deceased was earning a sum of Rs. 5,000/- per month, the Tribunal has taken the basic pay at Rs.1,170/- and Dearness Allowance at Rs. 1020/-, totaling Rs.2,190/-, as the monthly income.

3.4. The age of the deceased has been taken at '22', based upon the date of birth, as given in the licence i.e, the date of birth being 10.05.1981. Adopting the factor 221.37, the compensation has been fixed at Rs.2,42,400/- ($50/100 \times 2,190 \times 221.37$). Giving an observation that the lorry had been insured with the Insurance Company for the period from 22.05.2003 to 21.05.2004, the Insurance Company has been made to pay the compensation.

4. The contention of the learned counsel appearing for the appellant is that duplicate claims cannot be made by the first respondent herein and if at all any award has been passed by the Motor Accident Claims Tribunal, the award passed by the Deputy Commissioner of Labour, Workmen's Compensation Court, would be unjustifiable and it would amount to unjust enrichment.

4.1. This contention is acceptable, but no document has been filed to show that there is an award by the Motor Accident Claims Tribunal. Hence, it is made clear that, if any award has been passed by any court, in respect of Motor Accident Claims, this award will not be enforceable.

5. Subject to this observation, the award passed by the Court below is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the CMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's
Compensation Court 2 / Deputy
Commissioner of Labour-2, DMS Compound, Chennai - 6.

2. The Section Officer, V.R.Section, High Court, Madras

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