

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGEMENT RESERVED ON: 10.02.2017

JUDGMENT PRONOUNCED ON: 16.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.158 of 2003

National Insurance Company Limited,
Namakkal, rep. by its
Branch Manager.

... Appellant

Vs.

1. Sarasu
2. Minor Thangammal
3. Minor Shanthi

[Minors are represented by her mother
and natural guardian, the first respondent
namely Sarasu]

4. M/s.Selvalakshmi Borewells,
Kulathu Thottam, Kumaramangalam Post,
Tiruchengodu.

5. K. Selvaraj
[R4 & R5 Ex parte before the Tribunal]

... Respondents

Prayer:- Civil Miscellaneous Appeal have filed under Section 173 of Motor Vehicles Act, against the award and decree dated 08.08.2002 made in W.C.No.235 of 2000 on the file of the Commissioner for Workmen's Compensation [Deputy Commissioner of Labour], Salem.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.A.Chandramouleeswaran
for R1 to R3 - No Appearance
R5 - Notice served - No appearance
R4 - Paper publication effected
-No appearance

JUDGMENT

Challenging the liability fastened on it by the Deputy Commissioner (Labour) in an award passed under the Workmen's compensation Act, the insurance company has preferred this appeal.

2. On 31-01-1998, one Kasirajan, a driller working with the opposite parties/4th and 5th respondent herein, while travelling in a driller-lorry bearing Registration No.TDL 4507 suffered heart attack and died. This led to his legal representatives moved the Commissioner under the Workmen Compensation Act, 1923, seeking compensation of Rs.2,00,000/- alleging that Kasirajan had died in circumstances arising out of and in the course of the employment. Holding it thus, the Commissioner has passed an award for Rs.1,69,051/- with interest at 12% per annum and made the Insurance Company liable as well. This is in challenge.

3. Following is the substantial question of law raised by this Court :

Does not the contradiction in the original claim petition and the amended claim petition operate against the petitioners to sustain their claims.

4. The learned counsel for the appellant argued that it is a case where death has occasioned not arising out of or in the course of employment since the alleged employee lost his life due to heart attack. He was aged 39 years. She added that earlier the claimants/legal representatives of the employee had preferred a claim wherein they had alleged that the employee died while attempting to fix a rod in the lorry, but that was negatived by the F.I.R. registered as well as by the post-mortem certificate. Therefore, they amended the claim petition in line with the finding in the post-mortem report. The learned counsel argued that unless it is established that heart attack had occasioned due to stress, arising out of the employment per se it cannot be stated as one arising out of employment or in the course of employment. Consequently, the Insurance Company cannot be fastened with liability since the policy cover is available only for those workmen who suffered injury or died in the course of employment but not otherwise. She placed reliance on the authorities in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and another [(2007) 11 SCC 668] and Jyothi Ademma Vs. Plant Engineer and another [CDJ 2006 SC 518].

5. Though the Court notice was served on the respondents 1 to 3 and 5, and Mr.A.Chandramouleeswaran, learned counsel has entered appearance for respondents 1 to 3, but despite his name being printed in the cause-list, there is no representation for respondents 1 to 3 and even for the fifth respondent.

6. Admittedly, the deceased had collapsed while he was working, and therefore there cannot be any dispute that it had occurred during and in the course of his employment. According to the appellant, the liability to pay compensation would arise only if

the complaints establish that death due to heart attack was the direct consequence of his occupational stress. While the medical opinion was that the death had occasioned due to Kasirajan suffering heart attack, there is no medical opinion that it was not caused due to occupational stress. Further, it is not established that Kasirajan has had cardiac issues earlier. That Kasirajan might not have suffered heart attack due to occupational stress is only a probability, but not certainty. Therefore benefit of doubt should be given only in aid of the view that advances the beneficial object behind the enactment which provides compensation for death of a workman.

7. In the result, there is no merit in the appeal and the same is dismissed and the appellant/insurance company is directed to deposit the award for Rs.1,69,051/- with interest at 12% per annum from the 31st day of the accident, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order, whereupon, the claimant is entitled to withdraw the same forthwith. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kmi/ds

To:

1. The Deputy Commissioner of Labour,
Salem.
2. The Section Officer, सत्यमेव जयते
V.R.Section, High Court, Madras. (2 COPIES)

+1cc to Mr.N.B.SUREKHA, Advocate, S.R.No. 81631

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Judgment in
C.M.A.No.158 of 2003

GP (CO)
TR(19/02/2018)