

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.446 of 2010
and M.P.No.1 of 2010

M/s.United India Insurance co., Ltd.,
Branch Officer
1940-B, Trichy Road,
Ramanathapuram,
Coimbatore 45.

.. Appellant/2nd Respondent

vs.

1.Savithiri
2.Ayyasamy @ kannaiyan
3.V.Ramakrishnan

... Respondents/Applicants/
1st Respondent

Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act against the Judgment and decree dated 20.11.2009 made in W.C.No.72 of 2007 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour) at Coimbatore.

For petitioner : Mrs.R.Srividhya
For Respondents 1 & 2 : Mr.S.Kaithamalai Kumaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the order and decreetal order made in W.C.No.72 of 2007 dated 20.11.2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour) at Coimbatore.

2. According to the respondents 1 and 2, on 22.03.2007 at about 9.45 p.m., while the deceased Nagaraj was travelling as a cleaner in the lorry belonging to the third respondent bearing Reg.No.TN.KL.11.4025 insured with the appellant/insurance company, the driver was driving the vehicle at a high speed and noticing the curve in the road, suddenly applied brake and due to which, the lorry capsized and the said Nagaraj died on the spot during the course of his employment. At the time of accident, the deceased was aged about 22 years and was earning

Rs.4,000/-p.m. The accident had occurred only due to the rash and negligent driving of the driver of the lorry. Therefore, the appellant-Insurance Company is liable to pay the compensation to the respondents 1 and 2.

3. The third respondent remained exparte before the Tribunal. The appellant/insurance company filed counter statement and denied all the averments made in the claim petition stating it is for the respondents 1 and 2 to prove that during the course of the employment the deceased met with the accident. It is further stated that three persons travelled in the said lorry, which is contrary of the permit and policy condition. The deceased travelled as an unauthorised/gratuitous passenger and therefore, the appellant is not liable to pay the compensation to the respondents 1 and 2.

4. Before the Deputy Commissioner of Labour, 2nd claimant was examined as P.W.1 and one Matheu was examined as P.W.2 and eight documents were marked as Exs.P.1 to P.8 on the side of the claimants. One Bose, the Assistant Manager of Insurance Company, was examined as RW1 and four documents were marked as Exs.R1 to R4 on the side of the appellant/Insurance Company.

5. The Deputy Commissioner of Labour, after considering the pleadings and oral and documentary evidence came to the conclusion that the deceased was working as a cleaner and died during the course of employment under the third respondent. Therefore, the appellant and the third respondent are jointly and severally liable to pay the compensation to the respondents 1 and 2. The Deputy Commissioner of Labour awarded a sum of Rs.4,16,817/- as compensation under the following heads.

Loss of income (Rs.3,689x50/100x221.37)	Rs.4,08,317/-
Funeral expenses	Rs. 2,500/-
Total	Rs.4,10,317/-

6. At the time of admission, the following substantial questions of law were framed:

1. Whether the learned Commissioner having accepted the contents in the FIR to hold that the deceased was a cleaner who was sleeping at the time of the accident, ought to have held that since the driver T.Suresh was not sole driver, the appellant cannot be made liable since the scope of their defence is unlimited as the terms of policy?

2. Whether the learned Commissioner has erred in directing the appellant to pay funeral expenses which was exclusive responsibility of the employer?

3. Whether the award of the learned Commissioner is liable to be set aside?

7. The learned counsel for the appellant submitted that the respondents 1 and 2 failed to prove that deceased was working as cleaner in the service of third respondent and that he died during the course of employment. The deceased travelled as gratuitous passenger. There were three persons in the cabin in violation of policy conditions. The driver was drunk at the time of accident. The Commissioner failed to consider these facts and committed error of law in awarding compensation.

8. The learned counsel for the respondents 1 and 2 would submit that their son viz., Nagaraj was working as a cleaner and during the course of employment under the third respondent and he died during the course of his employment. The second respondent was examined as P.W1 who marked Ex.P.1-FIR, wherein it has been categorically stated that the deceased was working as a cleaner and died during the course of his employment. The appellant and third respondent have not let in any contra evidence to disprove their contentions. The appellant has let in oral and documentary evidence only with regard to the violation of permit and policy condition and to the effect that the accident had occurred only due to rash and negligent driving the driver of the vehicle who was drunk at the time of accident. Appellant did not let in any evidence to substantiate this contention.

9. The only question to be decided in this appeal is whether the deceased was the cleaner and died during the course of his employment. The Commissioner of Workmen Compensation, Coimbatore has considered all the materials on record and concluded that the deceased was working as cleaner under the third respondent and died during the course of his employment. The Commissioner has given valid reason for this finding and also held that the accident occurred only due to the rash and negligent driving of the driver of the lorry. There is no reason or circumstance warranting setting aside the said finding.

10. As far as the quantum of compensation, the respondents 1 and 2 did not let in any evidence to prove the income of the deceased and in the absence of evidence with regard to income of the deceased, as per G.O.(2D) No.47, dated 01.08.2003, the Commissioner fixed the income of the deceased at Rs.3,689/-p.m. which is valid.

11. Taking into consideration the age of the deceased, the Commissioner applied proper factors and fixed the total compensation payable to the respondents at Rs.4,20,817/- which is reasonable. Hence, the questions of law are answered against appellant and this civil miscellaneous appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kkd

To

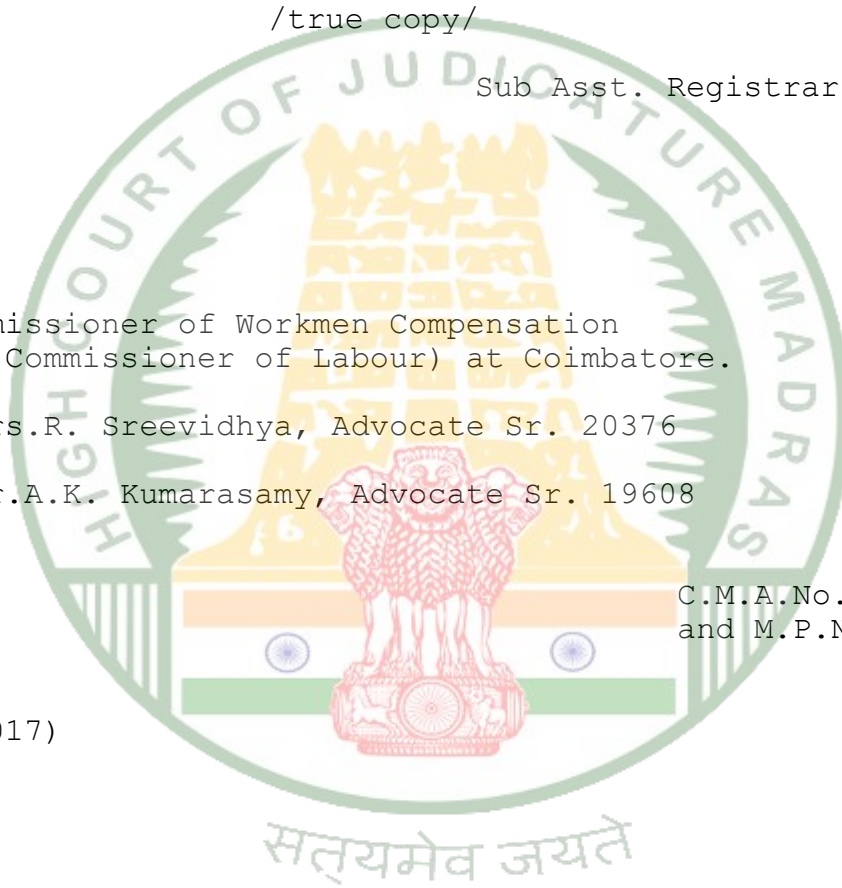
The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour) at Coimbatore.

+1cc to Mrs.R. Sreevidhya, Advocate Sr. 20376

+1cc to Mr.A.K. Kumarasamy, Advocate Sr. 19608

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SJ(CO)
VR(25/5/2017)



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