

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.601 of 2008

1.Rani
2.Sumathi
3.Suganthi
4.Minor Karunakaran,
S/o.Thangavel.

... Appellants

Vs.

1.M.Kalarani
2.National Insurance Co.Ltd.,
403, Mettur Road, Bhavani.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 30 of the Workmen's Compensation Act, 1923, against the order dated 05.06.2006 (received by the appellants on 21.07.2006) in W.C.No.255 of 2004 on the file of the Commissioner for Workmen's Compensation-cum-Deputy Commissioner of Labour, Salem, challenging the inadequacy of the compensation and also the dismissal of the claim petition as against the 2nd respondent.

For Appellants : Mr.D.Shivakumar

For R2 : Mr.Suryanarayanan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 05.06.2006 (received by the appellants on 21.07.2006) in W.C.No.255 of 2004 on the file of the Commissioner for Workmen's Compensation-cum-Deputy Commissioner of Labour, Salem, challenging the inadequacy of the compensation and also the dismissal of the claim petition as against the 2nd respondent.

2. The legal heirs of the deceased have filed the claim against the death of the head of the family viz. late M.Thangavel, S/o.Manickam. On the fateful day, the deceased was driving the vehicle bearing registration number TN 28 V 4646 owned by the first respondent. The tanker lorry, which was

driven by the deceased met with an accident at about 02.00 a.m arising out of which, he died on the spot. The police have registered the case and since the vehicle was covered by the insurance company, the 2nd respondent is liable to pay the compensation. The authority, under the Workmen's Compensation Act, has framed the issue as to whether the death had happened due to the accident or not, the wage and salary and consequential compensation.

3. The claimants have marked the First Information Report, postmortem report, driving license and insurance policy, in support of their claim, the wife of the deceased has let in evidence as P.W.1 and no evidence was let in on the side of the respondents and no documents were marked. The Tribunal has ultimately found that the deceased is entitled to Rs.3,13,339/-. On the issue of liability, the Tribunal held that the deceased/driver was not having valid driving license on the date of accident on 04.03.2004 and therefore, the owner of the vehicle viz. the first respondent was liable to pay the compensation. Not satisfied the award, the appellants/claimants have preferred this appeal.

4. The grounds raised by the claimants are three fold. Firstly, the deceased was having a valid driving license renewed upto the year 2006 and special endorsement for driving hazardous vehicle, which expired on 21.04.2004, and therefore, the finding of the authority below is not correct. Secondly, the compensation awarded on the basis of minimum wages at the rate of 3,843/- is not reasonable, as drivers have earned about Rs.6,000/- during the relevant period. Thirdly, they have not awarded interest as per Section 4-A of the Employee's Compensation Act, 1923.

5. The learned counsel appearing for the 2nd respondent would vehemently contest that no document was produced to show that the deceased was having valid driving license, more particularly, with an endorsement for hazardous vehicle. Secondly, the claimants have also not produced any documents to prove the income. In the absence of any proof, thereof, the authority has rightly arrived at the compensation by applying all the relevant factors and relying on Notification of Minimum Wages Act. Therefore, the order passed by the authority need not be interfered.

6. At the time of hearing, the learned counsel appearing for the appellants has produced the original copy of the driving license belonging to the deceased. On perusal of the same, it is seen that the license is valid till 29.04.2006 and endorsement for driving hazardous vehicle expired by 21.04.2004. Further, the authority below has also observed that the deceased had

undergone the training for safe transportation of hazardous vehicles during the relevant period. The only infirmity found, according to the Tribunal, was that the document marked as Ex.P3, driving license was an expired license. Therefore, the authority fixed the liability on the first respondent. But, the evidence shows that the deceased had undergone special training for safe transportation of hazardous vehicle by itself will reveal that the persons, without valid license, will not be permitted to undergo this training. Now that, the appellants have produced the valid driving license before this Court, it has to be held that the deceased was having proper license on the date of accident. The accident had taken place on 04.03.2004, whereas the endorsement for driving hazardous vehicle lapsed on 21.04.2004, much later than the date of accident. In that event, the 2nd respondent/insurance company is liable to pay compensation. Accordingly, the liability has been fixed on the 2nd respondent to pay the compensation. Insofar as the contention for enhancing the compensation is concerned, the appellants did not produce any documentary proof to show the salary of deceased at the relevant point of time. The authority has rightly relied on minimum wages at the rate of Rs.3,843/- applicable for the year 2003-2004. Therefore, no interference on the above aspects is needed.

7. Insofar as the interest is concerned, it is well settled by the Hon'ble Supreme Court in Pratap Narain Singh Deo vs Shrinivas Sabata and another reported in 1976 A.C.J.141, which was followed by a Hon'ble Division Bench of this Court in N.Ganesan Vs. Thilagavathi and another reported in 2010 (2) TN MAC 80(DB) that if the word "falls due" as specified under Section 4-A of the Employee's Compensation Act, 1923, denotes the date of accident and not the date of order passed by the authority. Therefore, the claimants are entitled for interest after 30 days from the date of accident till the date of deposit.

8. Accordingly, a) the quantum of compensation awarded by the authority below is confirmed.

b) the finding with regard to liability is set aside and the liability is fixed on the 2nd respondent, insurance company.

c) the claimants are entitled for interest at 12% p.a. after 30 days from the date of accident till the date of deposit. The driving license is taken as part of the record. The 2nd respondent/insurance company is directed to deposit the entire amount with interest, within a period of four weeks, from the date of receipt of a copy of this order.

9. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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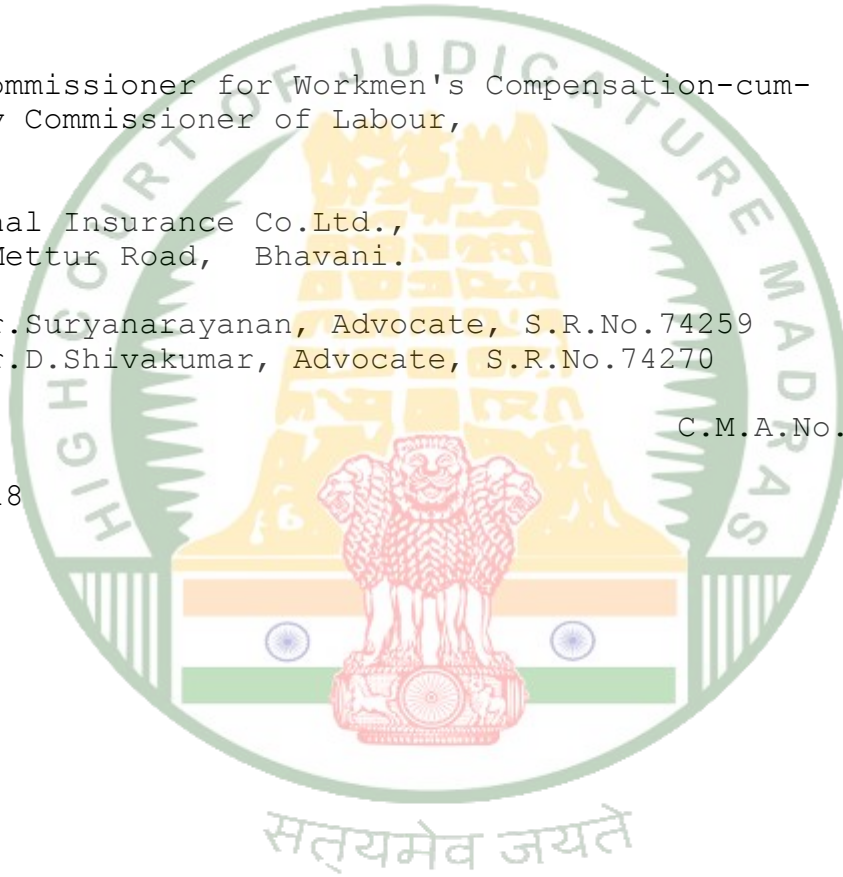
1. The Commissioner for Workmen's Compensation-cum-Deputy Commissioner of Labour,
Salem.
2. National Insurance Co.Ltd.,
403, Mettur Road, Bhavani.

+1cc to Mr.Suryanarayanan, Advocate, S.R.No.74259

+1cc to Mr.D.Shivakumar, Advocate, S.R.No.74270

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