

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3055 of 2006
and MP.No.1 of 2006

The New India Assurance Company Ltd.,
First Line Beach,
Chennai - 1.

...

Appellant/2nd Respondent

Vs.

1.R.Ramani
2.K.Ramakrishnan
3.Sarojini

...

Respondents/Appellants
1 & 2 & 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 28.4.2006 made in W.C.No.421 of 2004 on the file of Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-6.

For Appellant : Mr.S.Manohar

For Respondents : Mr.S.Udayakumar [for R1 & R2]

JUDGMENT

The Insurance Company/appellant who is arrayed as the second respondent before the Commissioner has challenged the liability in W.C.No.421 of 2004 to pay a compensation of Rs.4,19,790/- for the death of a workman alleged to have taken place in the course of his employment under the third respondent herein (first respondent before the Court of Commissioner for Workmen Compensation).

2. The third respondent is the owner of a Tata Sumo car bearing registration No.TN09-Q-1717, under whom the victim was stated to be working as a driver. On 14.5.2004, the victim had informed his father, the second respondent herein, that he would be going on a trip to some places in Thanjavur District and thereafter nothing was heard from him. On 15.05.2004, the father of the victim had received some information that his son was found murdered with his hands and legs tied up and his body was found in a locality not far away from the place where he resided. The second respondent would then lodged a FIR where he disclosed that the victim had informed him of his intended long trip on the previous day and expressed his suspicion that

those who have hired the vehicle might have murdered him and escaped with the vehicle. Seeking compensation, his parents moved the Commissioner under Workmen Compensation Act, who assessed the compensation as stated above. Before the Commissioner, the owner of the vehicle remained exparte.

3. The learned counsel for the appellant argued that it is a case of pure and straight forward murder and except the solitary and self-serving statement of the father of the victim in the FIR or that of his mother in her testimony as P.W.1, there is nothing on record to indicate that the victim at that relevant time was an employee under the third respondent. Further, except Ext.P-1 FIR, there is no other evidence to indicate that he was murdered in the course of employment. At any rate, the learned counsel contended, even if it were presumed that he was murdered while in the course of employment still to the extent the evidence discloses it is a case where the vehicle in question was presumably hired by the assailants of the victim, and to hire the vehicle in question is a contravention to the policy condition. The Insurance Company, hence is not liable on a combined reading or even on the alternative reading of the aforesaid possibilities.

4. Per contra, the learned counsel for the respondents 1 and 2 submitted that it is pleaded in the petition that the victim had only gone on a trip and no way it is pleaded that the vehicle was hired. Secondly, the claimants have produced whatever evidence that are within their capacity to produce and it is not given to the appellant to take exception to such inability of the claimants to impose additional burden on it.

5. While the Court is in search for the best evidence, it is also conscious of the fact that no litigant shall be subjected to a burden to prove something that which is beyond his ability to prove. The claimants have come forward with a straightforward allegation that their son was working as a driver under the third respondent and that he was murdered in the course of his employment, and these merely are the facts that they are expected to establish. When the third respondent opted to remain exparte, who then has to adduce the rebuttal evidence that the victim was not an employee under the former? For want of proof to the contrary, it has to be held, as has been held by the Tribunal below, that the victim was working as a driver under the third respondent at the time when the occurrence took place.

6.1. On the point whether death has visited the victim while in the course of employment is concerned, again there is no contra evidence to negate the earliest statement in FIR. A father, who would be under a shock to receive the information of

his son's murder, would be in no mind to create a story with contemplation on compensation to provide a false statement. But the insurance company seemingly keen to go casuistic and expects the claimants to prove their right to compensation with proof of facts beyond all reasonable doubts. It does not require any reminder that the Workmen Compensation Act is a beneficial legislation and hence strict rules of evidence as would be applicable to adversarial civil litigation cannot be transported to the Tribunal administering the Act. With the owner of the vehicle remaining exparte, and with a body of the victim found tied up, the claimants have proved so much facts as might be required to establish their right to get compensation. It is now for the insurance company to prove the evidence to the contrary, but here it has failed.

6.2 Turning to the last leg of appellant's contention that it was a case of hire and not a gratuitous trip is concerned, the only evidence available before the Court is that of the P.W.1. Here again there is no contra evidence nor this aspect was adequately discredited during her cross-examination. I therefore, do not find adequate support for advancing this theory of the appellant either.

7. In conclusion, I do not find any reason to interfere with the award of the Tribunal and hence the appeal is dismissed without costs. The claimants are permitted to withdraw the award amount forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Court of Commissioner
for Workmen's Compensation -II
(Deputy Commissioner of Labour-II)
Chennai - 6.

2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.S. Manohar, Advocate sr 5897
+1 CC to Mr.S. Udhaya Kumar, sr 5724

CMA.No.3055 of 2006

PA (CO)
sp/31/5



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