

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2792 of 2004

- 1.K.Amutha
 - 2.K.Parameswari (Minor)
 - 3.K.Babu (Minor)
- Minors 2 & 3 are rep. by mother
and next friend K.Amutha Appellants/Applicants

-vs-

- 1.Ramesh Sindwani
 - 2.United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 600 002.
 - 3.Tractor and Farm Equipment Limited,
No.35, Milestone,
07, Dindigul National Highways,
Kaliadipetti Post, Madurai.
 - 4.Deepak Road Carriers,
No.14, Coral Merchant Street,
First Floor, Chennai.
- Respondents/Opposite Parties
- (respondents 3 & 4 has been given up,
as no relief claimed against them)

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923 to set aside the order dated 05.01.2004 in W.C.No.287 of 2001 on the file of the Deputy Commissioner for Labour - I (Commissioner for Workmen's Compensation - I), Chennai - 600 006 and pass an award for a sum of Rs.2,07,980/- against the respondents payable by the second respondent with interest at the rate of 12% p.a. from the date of accident.

For Appellants : Mr.A.Shanmugaraj
For Respondent No.1 : No Appearance
For Respondent No.2 : Mr.V.Gopalakrishnan
For Respondent Nos.3&4: Given up

J U D G M E N T

The appeal has been preferred against the order dated 05.01.2004 of the Commissioner, Workmen's Compensation, Chennai in W.C.No.287 of 2001.

2. The appellants are the claimants. The claimants the heirs of deceased Kali. According to the appellants, Kali was employed as a load man by the first respondent, Ramesh Sindwani. On 09.04.2000 at about 5.30p.m. the deceased was engaged by the first respondent in loading new tractors onto the trailer bearing Registration No.HR-38-A-0671. The trailer was insured with the second respondent. In the course of loading the tractors, a tractor accidentally fell on Kali, as a result of which, he died on the spot. The deceased was 30 years old at the time of accident. The claimants claimed a total compensation of Rs.3,00,000/-.

3. The first respondent resisted the claim on the ground that there was negligence on the part of Kali. The Insurance Company denied its liability to pay compensation on the ground that there was no employer and employee relationship between the first respondent and the deceased Kali.

4. Before the Commissioner, the first claimant examined herself as P.W.1. They have marked 6 exhibits. The respondents did not adduce any evidence. On a consideration of the oral as well as the documentary evidence, the Commissioner found that the accident resulting in the death of Kali took place in the course of his employment under the first respondent. The Commissioner determined the compensation at Rs.2,07,980/-. The Commissioner has omitted to award interest in terms of Section 4-A(1) (3) of Workmen Compensation Act, 1923.

5. Aggrieved by the omission to grant interest, the present appeal has been filed.

6. The learned counsel for the appellants would submit that the compensation has fallen due on the date of accident and the period for payment of compensation is one month and after the expiry of the one month period, the appellants are entitled to interest at the rate of 12%.

7. Section 4-A(1) and (3) reads thus: "(1) Compensation under Section 4 shall be paid as soon as it falls due. (3) Where any employer is in default in paying the compensation due under this Act within one month from the date

it fell due, the Commissioner shall- (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty: Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

8. The Hon'ble Supreme Court in ORIENTAL INSURANCE CO. LTD. vs. SIBY GEORGE AND OTHERS [2012 ACJ 2126] has held that "compensation under Workmen Compensation Act falls due on the date of accident and interest starts accruing one month after the date of accident". In the case at hand, obviously, the Commissioner omitted to award interest as provided under Section 4-A(1) and (3) of the Workmen Compensation Act, 1923. In the light of the dictum laid down by the Hon'ble Supreme Court, it must be held that the compensation payable to the appellants has fallen due on the date of accident i.e. on 09.04.2000. The compensation has to be paid within one month. The compensation was not paid within the period of one month. There is thus default in payment of compensation. Therefore, the claimants are entitled to interest at the rate of 12% from the date of default in terms of the Section 4-A(1) and (3) of the Workmen Compensation Act, 1923.

9. The award of the Commissioner dated 05.01.2004 will stand modified in the above terms. The Civil Miscellaneous Appeal is disposed of. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri

To

The Deputy Commissioner for Labour - I
(Commissioner for Workmen's Compensation - I),
Chennai - 600 006.

Copy to

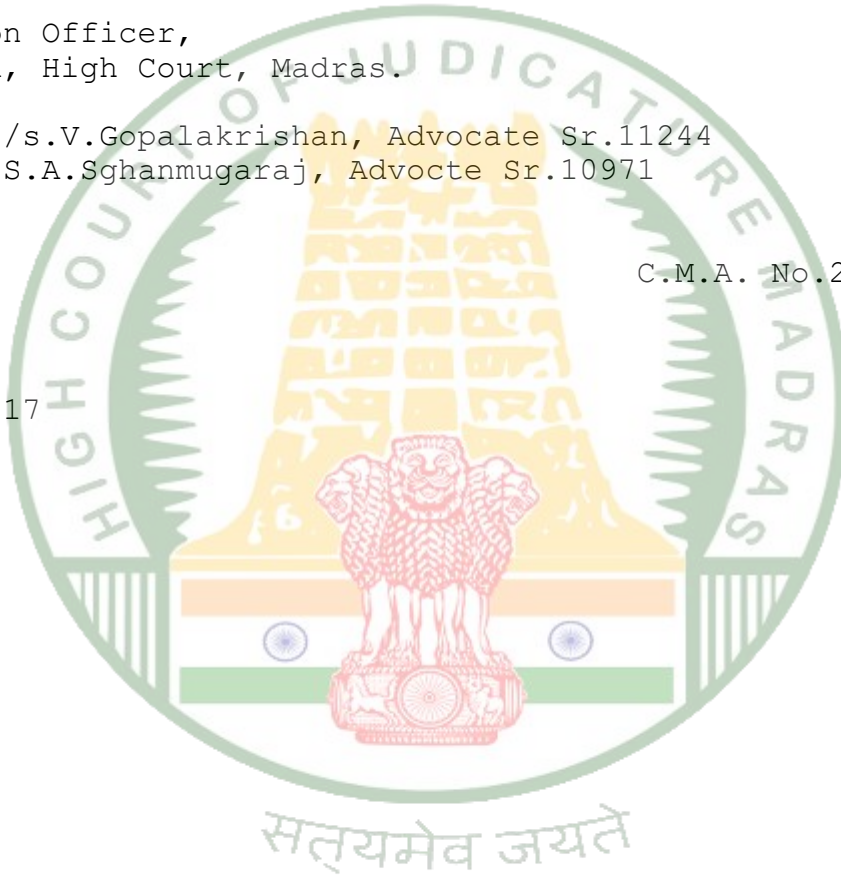
The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.V.Gopalakrishnan, Advocate Sr.11244

+1cc to M/S.A.Sghanmugaraj, Advocte Sr.10971

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srg 6/3/2017



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