



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2017

Delivered on : 14.11.2017

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. (MD) No. 414 of 2013

and

M.P. (MD) No. 1 of 2013

The Branch Manager,
National Insurance Company Limited,
403, Mettur Road,
Bhavani,
Erode District.

: Appellant / Respondent No.2

Vs.

1. Rajammal	: Respondent No.1/Petitioner No.1
2. Eswari	: Respondent No.2/Petitioner No.2
3. Eswaran	: Respondent No.3/Petitioner No.3
4. C. Swarnambal	: Respondent No.4/Respondent No.1

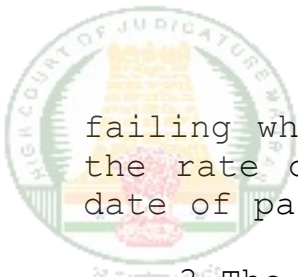
PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923, praying to set aside the award passed by the learned Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul in W.C.No.268 of 2006 dated 19.04.2010.

For Appellant	: Mr.D.Sivaraman
For Respondent No.1	: Mr.S.M.Mohan Gandhi
For Respondents 2 to 4	: No appearance

JUDGMENT

The appellant has preferred this Civil Miscellaneous Appeal against the award passed in W.C.No.268 of 2006 dated 19.04.2010, on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul.

2.The appellant is the insurance company, against whom the impugned award has been passed, under the Workmen's Compensation Act, 1923 [hereinafter referred to as 'the Act']. The Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul passed an award dated 19.04.2010 in W.C.No.268 of 2006 in favour of the respondents 1 to 3, who are the legal heirs of the deceased Pandian for a sum of Rs.3,85,324/- and the said amount was directed to be deposited by the appellant before the Deputy Commissioner of Labour, Dindigul, within a period of thirty days,



failing which the respondents 1 to 3 were entitled to interest at the rate of 12% p.a. on the said sum of Rs.3,85,324/-, till the date of payment of the entire awarded amount.

3. The primary ground on which the appellant insurance company has filed this appeal under Section 30 of the said Act, is that there is no employer-employee relationship between the appellant and the deceased Pandian and therefore, the claim filed before the Workmen's Compensation Tribunal by the legal representatives of the deceased Pandian is not maintainable and the award passed against the appellant is erroneous and is contrary to law, weight of evidence and probabilities of the case.

4. The substantial questions of law raised by the appellant for filing this appeal under Section 30 of the Act are as follows:

a) *Is not the finding of the Commissioner regarding the employer-employee relationship between the insured and the deceased perverse in view of the oral and documentary evidence available to prove that the deceased was not an employee under the insured?*

b) *Whether the Commissioner is correct in relying on the evidence of P.W.2 which is totally contrary to the available oral and documentary evidences and the averments made in the claim application?*

c) *Whether the minimum wages applicable for a cleaner is applicable to the deceased when he was not the cleaner of the lorry but he was only a coolie in the bore well company?*

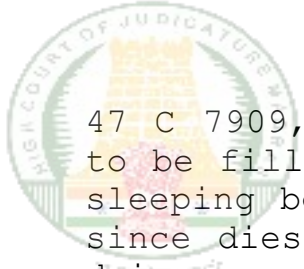
d) *Whether the learned Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul is correct in directing the appellant/insurance company to pay interest on the award from the date of the accident, which is in contradiction to Section 4-A(30) of the Workmen's Compensation Act?*

5. In order to find out whether there was an employer-employee relationship between the owner of the vehicle which was insured by the appellant and the deceased Pandian, whose legal representatives claimed the compensation under the Act, the facts of the case, the evidence both oral and documentary let in by the parties to the dispute have to be considered by this Court.

6. The legal representatives of the deceased Pandian, namely the respondents 1 to 3 in this appeal, filed the claim petition in W.C.No.268 of 2006, making the following averments:

a) The deceased Pandian was 27 years old at the time of the accident. He was employed as a cleaner in the vehicle bearing Registration No. TN 7909. His monthly salary was Rs.4500/-.

b) On 03.06.2005, at around 04.00 a.m., while fixing the bore well, the driver of the support lorry bearing Registration No. TN



47 C 7909, informed the deceased Pandian that diesel is required to be filled for the vehicle. At that time, deceased Pandian was sleeping behind the lorry and the driver of the lorry woke him up since diesel will have to be filled up for the lorry. The lorry driver requested the deceased Pandian to get inside the lorry but without seeing as to whether the deceased had got into the lorry, the lorry driver reversed the lorry at great speed and the deceased Pandian who was behind the lorry was run over by the lorry, resulting in his death.

c) According to the claimants, the death of Pandian occurred only due to the rash and negligent act of the driver of the vehicle TN 47 C 7909, which has been insured with the appellant by the fourth respondent, who is the owner of the said vehicle.

7. Admittedly, the owner of the lorry TN 47 C 7909, is the fourth respondent, who is the insurer and the appellant is the insured. The First Information Report was also registered based on the complaint given by a co-worker of the deceased Pandian. According to the FIR, the bore well vehicle and the lorry which is insured with the appellant are both owned by the fourth respondent and that the deceased was working as a cleaner/helper in the lorry owned by the fourth respondent. According to the FIR, the complainant Mariappan was working as a Supervisor in the lorry, which is insured with the appellant. The legal representatives of the deceased Pandian, namely respondents 1 to 3, filed a Compensation Claim Petition under the Act, before the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul, in W.C.No.268 of 2006. The appellant had also filed its statement of objections before the Deputy Commissioner of Labour, Dindigul, and disputed its liability on the ground that the deceased Pandian was not an employee of the fourth respondent and that he was working as a coolie only with the ACR Bore well Company and therefore, there is no employer-employee relationship between the fourth respondent and the deceased Pandian. The lorry bearing Registration No. TN 47 C 7909, owned by the fourth respondent alone is insured with the appellant and the bore well vehicle in which the deceased Pandian was employed is not owned by the fourth respondent and not insured with the appellant and hence, the claimants are not entitled to claim compensation as there is no employer-employee relationship.

8. Oral and documentary evidence were let in by both the appellant as well as the respondents 1 to 3. The claim was filed by the respondents 1 to 3 asserting that there was an employer-employee relationship between the deceased Pandian and the fourth respondent. The FIR registered by the police also reiterates the assertion made by the respondents 1 to 3 in the claim petition. The mother of the deceased Pandian, namely, the first respondent

<https://www.hcma.org.in/courts/index.html> P.W.1 and the supervisor of the vehicle of the lorry TN 47 C 7909, which is insured with the appellant was examined as P.W.2 on the side of the claimants. On the side of

the appellants, its senior officer was examined as R.W.1.

9. The mother of the deceased Pandian has deposed in her chief examination that the deceased Pandian was employed with the fourth respondent and even in her cross examination, she has denied the question put forth by the learned counsel for the respondents that there is no employer-employee relationship between the fourth respondent and the deceased Pandian. P.W.2, the Supervisor of the lorry TN 47 C 7909 also admitted the fact that the deceased was employed as a cleaner/helper in the lorry TN 47 C 7909, which is owned by the fourth respondent. The appellant's witnesses namely R.W.1, has also admitted in his cross examination that the lorry TN 47 C 7909 is insured with them by the fourth respondent. He has also admitted that the driver of the lorry TN 47 C 7909, without seeing as to whether the deceased Pandian got into the vehicle, reversed the vehicle and the deceased Pandian who was behind the vehicle was run over by the lorry, which resulted in his death.

10. Further, considering the pleadings and the oral and documentary evidence on both sides, the Workman's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul, has given a clear finding that there is an employer-employee relationship between the deceased Pandian and the fourth respondent and that the accident which caused the death of Pandian happened only during the course of his employment with the fourth respondent. The Workman's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul, has given a clear finding that the deceased Pandian was working as a cleaner in the lorry TN 47 C 7909, which is owned by the fourth respondent. Based on the claim statement of the respondents 1 to 3, proof affidavit, First Information Report, Post Mortem certificate and oral evidence let in by P.W.2, the supervisor of the lorry TN 47 C 7909, the workman's Compensation Commissioner cum Deputy Commissioner, Dindigul has given a clear finding that the deceased Pandian was an employee of the fourth respondent, who is the owner of the vehicle TN 47 C 7909.

11. Based on the clear findings, the Workman's Compensation Commissioner passed the impugned award dated 19.04.2010 in W.C.No.268 of 2006 in favour of the respondents 1 to 3. As seen from the records, the respondents 1 to 3, who are the claimants have always asserted that the deceased Pandian was an employee of the fourth respondent, who is the owner of the vehicle, TN 47 C 7909, which is insured with the appellant.

12. Having asserted the said fact in their claim statement, in the FIR and in their deposition, the burden of proof for ~~establishing~~ that there is no employer-employee relationship between the deceased Pandian and the first respondent is shifted to the appellant. Instead of letting in oral and documentary



evidence to establish that there was no employer-employee relationship between the deceased Pandian and the first respondent, the appellant has entirely relied upon the evidence of the claimants namely, the respondents 1 to 3 for the purpose of proving that there is no employer-employee relationship. The accident is not disputed. The ownership of the lorry TN 47 C 7909 by the first respondent is also not disputed. The fact that the lorry is insured with the appellant is also not disputed. The death of Pandian due to the accident on the said date is also not disputed by the appellant. The Supervisor of the lorry TN 47 C 7909, namely, P.W.2., who claims to be the employee of the fourth respondent has also not been disproved by the appellant.

13. In the instant case, the claimants, namely, respondents 1 to 3 have established a *prima facie* case that the deceased was a workman under the first respondent. Therefore, the burden of proof has been shifted to the appellant to establish that there is no employer-employee relationship between the deceased Pandian and the fourth respondent and they have miserably failed before the workman's compensation Commissioner to rebut the claim of respondents 1 to 3 by letting in solid and clinching evidence to establish that there is no employer-employee relationship. The Hon'ble Supreme Court in the case of **Bank of Baroda Vs. Ghemarbhai Harijibhai Rabari** reported in (2005) 10 SCC 792, held that when the workman has established a *prima facie* case that he was a workman and the management have not taken care even to rebut the same with any evidence, the question of the workman further proving his case did not arise. Paragraph 8 and 9 of the said judgment which covers this point is extracted hereunder:

"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the for a below, no evidence whatsoever has been adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No



evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank.

9.As held by the High Court and referred to hereinabove, neither the judgment of this Court in the case of Punjab National Bank nor in Range Forest Officer would assist the appellant in this case because of the proved facts of this case. Even the case of M.P.Electricity Board relied upon by the learned counsel for the appellant, does not help the appellant. The said judgment only lays down that the initial burden of establishing the factum of the workman having continuously worked 240 days in a year, rests with the workman. In this case that factum having been established, even that case, as stated, would not assist the appellant in challenging the orders of the courts below".

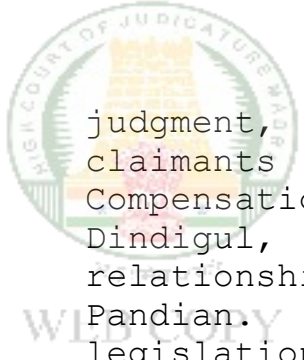
14.Applying the said judgment cited supra, the claimants namely respondents 1 to 3 having taken a consistent stand in their pleadings as well as in their deposition and supported by the statement of P.W.2., the supervisor of the lorry TN 47 C 7909, which caused the accident and furthermore the appellant having not rebutted the claim by letting in foolproof oral and documentary evidence to disprove the claim of the claimants, this Court does not find any merit on the part of the appellant in challenging the impugned award passed by the workman's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul, on the ground that there was no employer-employee relationship between the fourth respondent and the deceased Pandian. The Hon'ble Supreme Court in a decision rendered in **(2004) 3 SCC 514, (Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and others)**, in paragraph 50 of the said judgment has held that the question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

15.The learned Workman's Compensation Commissioner having given a clear finding based on the evidence available on record and there was an employer-employee relationship between the fourth respondent and the deceased Pandian, applying the Principal



of law laid down by the Hon'ble Supreme Court in the reported decision cited supra, this Court does not find any reason to interfere with the impugned award passed by the learned workman's compensation commissioner. The Hon'ble Supreme Court has also held in the case of **Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union** reported in (2004) SCC 245, that the standard and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or concretized into fixed formula(e) for universal application, invariably in all classes or categories of cases. Paragraph 18 of the said judgment is extracted hereunder:

"18. The standards and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or concretized into fixed formula(e) for universal application, invariably in all classes or categories of cases. Though some common standards can be devised, the mere availability of any one or more or their absence in a given case cannot be itself be held to be decisive of the whole issue, since it may depend upon each case to case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby attempt to compartmentalize and peg them into any pigeonhole formulae, to be insisted upon as proof of such relationship. This would only help to perpetuate practising unfair labour practices than rendering substantial justice to the class of persons who are invariably exploited on account of their inability to dictate terms relating to conditions of their service. Neither all the tests nor guidelines indicated as having been followed in the decisions noticed above should be invariably insisted upon in every case, not the mere absence of any one of such criteria could be held to be decisive of the matter. A cumulative consideration of a few or more of them, by themselves or in the combination with any other relevant aspects, may also serve to be a safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such variety or class of cases involving different type of establishments and in dealing with different employees would mean seeking for things, which are only impossible to find."



judgment, this Court is satisfied with the evidence let in by the claimants namely respondents 1 to 3, before the Workman's Compensation Commissioner cum Deputy Commissioner of Labour, Dindigul, to establish that there was employer-employee relationship between the fourth respondent and the deceased Pandian. The Workman's Compensation Act being a beneficial legislation to protect the interest of workmen, this Court is satisfied with the available evidence on record and comes to the conclusion that there was an employer-employee relationship between the fourth respondent and the deceased Pandian. Therefore, this Court is of the opinion that there is no substantial question of law for determination in this appeal, as required under Section 30 of the Act. The substantial questions of law raised by the appellant in the grounds of appeal does not deserve any merit and is rejected by this Court.

6. In the light of the above factors, the Civil Miscellaneous Appeal shall stand dismissed. However, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Workmen's Compensation Commissioner
cum Deputy Commissioner of Labour, Dindigul

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s. S.M. MOHANGANDHI Advocate in SR. No. 87365

MR

JS/GT/SAR.2/27.11.2017/8P-4C

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