



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.842 of 2016

and

C.M.P(MD)No.7917 of 2016

Divisional Manager,
United India Insurance
Company Limited,
No.52, South Masi Street,
Madurai-1.

... Appellant / Respondent No.2

Vs.

1.H.Jayakodi
2.H.Chitra
3.H.Amsavalli
4.H.Parthasarathi
5.M.Natarajan

... Respondents/ Petitioners
... Respondent/Respondent

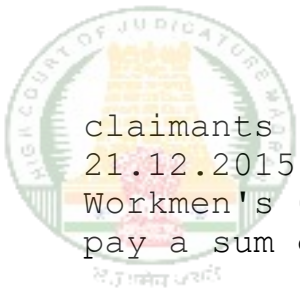
PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order passed in W.C.No.110 of 2011 dated 21.12.2015 on the file of the Deputy Commissioner of Labour / Commissioner for Workmen's Compensation, Madurai.

For Appellant	: Mr.C.Jawahar Ravindran
For Respondent No.1	: Mr. S.Ramasamy
For Respondent Nos.2 to 5	: No Appearance

JUDGMENT

The appellant insurance company has filed this appeal questioning the award passed by the Deputy Commissioner of Labour / Commissioner for Workmen's Compensation, Madurai in W.C.No.110 of 2011.

2.One Harikrishnan was posted as security guard at the office of Muthoot Finance Company at Villupuram. On 19.03.2010, he was murdered during the course of his employment. A legal notice was issued on behalf of the claimants, to the Proprietor of M/s.Sharp Security Services, Madurai and also the appellant herein, seeking compensation. The appellant herein sent a reply denying the existence of employer-employee relationship between the said security agent and the deceased. Therefore, the



claimants filed W.C.No.110 of 2011 and the same was allowed on 21.12.2015 by the Deputy Commissioner of Labour / Commissioner for Workmen's Compensation, Madurai directing the appellant herein to pay a sum of Rs.2,38,222/- as compensation.

3. Contending that the insurer ought not have been saddled with any liability, since there is no material to show that the deceased was a workman under the insured, this appeal has been filed.

4. This Court admitted this appeal by framing the following substantial question of law:-

a) *Whether the learned Commissioner has failed to note that the claimants and the insured have failed to produce any document to show the employer-employee relationship between the deceased Hari Krishnan and the fifth respondent herein.*

b) *Whether the learned Commissioner is correct in deciding the employer-employee relationship without any evidence.*

c) *Whether the learned Commissioner has failed to notice that the insured has violated the terms and conditions of the Insurance Policy.*

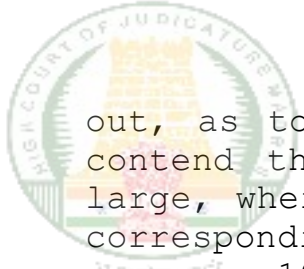
5. The learned counsel appearing for the appellant would contend that there is no material to show that the deceased was ever employed by the insured. He would also contend that the insured did not get into the witness box or adduced any evidence. In the claim petition also the claimants had given an impression that the deceased was only working as Security Guard in the Muthoot Finance Company.

6. Per contra, the learned counsel appearing for the claimants would contend that the claimants had issued a legal notice at the earliest point of time, both to the Sharp Security Services as well as the appellant herein. He would further contend that as a claimants, it is not within their means to do anything more.

7. The employer had also filed a counter, admitting the existence of the employer-employee relationship.

8. In these circumstances, I am of the view that the finding of the authority, under the Workmen's Compensation Act, 1923, that the deceased was an employee under the insured, need not be disturbed. However, the conduct of the employer will have to be taken note of. As per the terms and conditions of the insurance policy, the employer must intimate their insurer as soon as the occurrence took place and they must also furnish all the relevant particulars. However, in this case, the employer had not done so.

9. In view of the contention of the learned counsel appearing for the appellant is that only if the employer co-operates and furnishes the requisite information, it would be possible to find



out, as to whether the case on hand is really covered. He also contend that the number of workmen in the said company may be large, whereas, the premium to all the workmen would not have been correspondingly paid.

10. I find force in the said submission. Therefore, I answer the third substantial question of law in favour of the appellant. Hence, the award dated 21.12.2015 in W.C.No.110 of 2011, on the file of the Deputy Commissioner of Labour / Commissioner for Workmen's Compensation, Madurai is modified by applying pay and recover principle. The claimants are at liberty to withdraw the deposited amount, less the amount already withdrawn by them, if any. The appellant Insurance company is at liberty to proceed against the insured for the recovery of the said amount on the ground that the insured had violated the terms and conditions of the insurance policy.

11. This Civil Miscellaneous Appeal stands allowed, in these terms. No costs. Consequently, C.M.P(MD)No.7917 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commissioner of Labour / Commissioner for
Workmen's Compensation,
Madurai.

Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.C.Jawahar Ravindran , Advocate in SR No. 93386
+ 1 cc TO Mr.S.Ramasamy , Advocate in SR No. 93396

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AE/SV MMS/SAR4/12.06.2018/3P/6C

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