



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.558 of 2011

and

M.P.(MD)Nos.1 of 2011 and 2 of 2012

Bajaj Allianz General Insurance Company Limited,
Rep. by its Branch Manager,
KMA Complex, I Floor, Bye Pass Road,
12-G, Ram Nagar, Madurai 625 010. ... Appellant / Respondent-2

Vs.

1.Renukha
2.Minor Rubase
3.Minor Ruban

(Minor Respondents 2 & 3 are
rep. by next friend mother &
guardian Renukha)

4.Sivapayee ...Respondents 1 to 4/Petitioners

5.Eliyas ...5th Respondent /Respondent-1

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the order dated 06.01.2011 received on 10.03.2011 made in W.C.No.382 of 2007 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents 1 to 3 : Mr.S.Deenadayalan

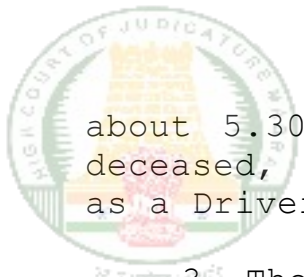
For Respondents 4 & 5 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the judgment and award of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy, in W.C.No.382 of 2007, dated 06.01.2011.

<https://hcservices.ecourts.gov.in/hcservices/>

2. It is a case of fatal accident took place on 10.11.2006 at



about 5.30 a.m., at Tharapuram to Palani road and in which the deceased, who drove the Maruthi Omni Van of the first respondent as a Driver died during the course of employment.

3. Therefore, the claimants filed an application in W.C.No.382 of 2007 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy, seeking compensation.

4. Before the Commissioner, the claimants examined one witness as P.W.1 and marked ten documents as Ex.P.1 to Ex.P.10. On the side of the appellant, one witness was examined as R.W.1 and eleven documents were marked as Ex.R.1 to R.11.

5. The Commissioner, after considering the pleadings, oral and documentary evidence and the arguments advanced on both sides and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/Insurance Company and directed the appellant/Insurance Company to pay the compensation at the first instance and then, recover the said amount from the fifth respondent/owner and awarded a sum of Rs.3,86,780/- as compensation.

6. Against which, the appellant/Insurance Company has filed this present appeal challenging the liability.

7. The learned counsel appearing for the appellant submitted that the driver of the vehicle was not possessed the valid driving licence on the date of accident and therefore, the Commissioner ought to have absolved the liability of the appellant from indemnifying the owner of the vehicle.

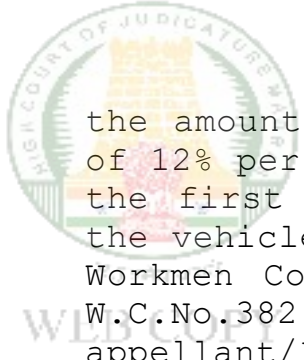
8. I have heard the learned Counsel appearing on both sides and perused all the materials available on record.

9. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimant. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle of "pay and recovery".

10. In view of the above, the Commissioner has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the fifth respondent and the said finding does not require any interference.

<https://hcservices.ecourts.gov.in/hcservices/>

11. In the result, this Civil Miscellaneous Appeal is dismissed and the appellant/Insurance Company is directed to pay



the amount awarded by the Commissioner, with interest at the rate of 12% per annum, from the date of petition, till realization, at the first instance and then, recover the same from the owner of the vehicle/fifth respondent and the award of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy, in W.C.No.382 of 2007, dated 06.01.2011, is hereby confirmed. The appellant/Insurance Company shall deposit the award amount within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant/Insurance Company is entitled to recover the same from the owner of the vehicle/fifth respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To,

The Commissioner of Workmen Compensation,
The Deputy Commissioner of Labour, Trichy.

Copy to:

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

+1 cc to Mr.S.Deenadhayalan , Advocate in SR.No. 72208

+1 cc to Mr.S.Srinivasa Raghavan , Advocate in SR.No. 72283

pm

AE/KP/SAR1/15.09.2017/3P/5C

C.M.A(MD)No.558 of 2011
11.08.2017