

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.09.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.691 of 2003

1. Paulsamy Chettiar ... Appellants / Petitioners
2. Maheswari

Vs.

Tmt.Jaya Ravishankar ... Respondent / Respondent

This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the Order dated 25.11.2002 passed in W.C.No.158/2000 on the file of the Commissioner for Workmen's Compensation - II, Chennai - 600 006.

For Appellants : Mrs.S.Agalya
For Mr.A.Shanmugaraj

For Respondent : Mr.P.Sathish Kumar
For Mr.K.S.Kumar

Judgment

This Civil Miscellaneous Appeal has been filed against the decree and Judgment dated 25.11.2002 made in W.C.No.158/2000 on the file of the Commissioner for Workmen's Compensation - II, Chennai - 600006.

2. The 1st appellant herein, is the father of the deceased Ganesan and the 2nd appellant herein, is the sister of the said Ganesan.

3. The 1st appellant's son, namely, Ganesan, was working as Van driver under the respondent herein, namely, Jaya Ravishankar and was being paid a sum of Rs.100/- as daily wages. On 20.09.1996, at about 9.30. p.m, while the said Ganesan was driving the Van, bearing Registration No.TN 01 D 4640 which belongs to the respondent, via G.S.T.Road, Pallavaram, Chennai - 43, he collided on the bus, bearing Registration No.TN 29 A 5757. Due to the said accident, the Ganesan died, and hence, his father and sister, the appellants herein, had approached the respondent claiming compensation, as she was the owner of the deceased Ganesan. But, the respondent denied to settle the

claim, stating that she is not liable to pay any compensation and only the insurance company, to whom she had insured the vehicle, is liable to pay compensation.

4. Whenever the appellants had tried to approach the respondent to settle the claim amount, they were informed that the insurance company will settle the claim within two or three months and hence, they demanded to furnish the Insurance particulars of the vehicle, which was involved in the accident on 20.09.1996, but, the respondent did not furnish the same. The appellants, also sent a legal notice to the respondent on 29.01.2000 demanding to furnish the insurance particulars of the vehicle, but, even after that, the respondent failed to furnish the particulars or settle the amount and hence, there was a delay in filing the claim petition in W.C.No.158 of 2000, before the Commissioner of Workmen's Compensation - II, Chennai. However, the said claim petition was condoned by the Commissioner, and the claimants/appellants had also produced all the necessary documents before the Commissioner of Labour and marked the same.

5. Denying the above allegations of the appellants, the respondent filed a counter affidavit, wherein, it has been contended that the deceased Ganesan was never employed by the respondent and there was no relationship between the respondent and the said Ganesan. Hence, the question of paying any compensation to the deceased person, does not arise. Further, the respondent would contend that she was engaged in the business of distributing mineral water and for which, she engaged her own drivers to supply water to various customers, but, the said Ganesan was never engaged by her at any point of time. Moreover, the respondent would contend that the claimants/appellants had never approached her for settling the claim in respect of the death of the said Ganesan and she never assured that she would settle the claim through the insurance company. Hence, she sought for dismissal of the above appeal.

6. During the trial before the Commissioner, the respondent did not appear for cross examination and only filed their counter statement. The Commissioner, after hearing the parties and considering the witnesses of the petitioners, has finally come to the conclusion that the deceased Ganesan had worked as a Van driver under the respondent and said accident occurred, only when he was working under the respondent. Hence, the petitioners were awarded a sum of Rs.2,17,611/- (including the funeral expenses i.e. Rs.1000/- of the said Ganesan) as compensation, to be paid by the respondent within a period of 30 days from the date of receipt of a copy of the order. Further, the Commissioner had concluded that on failing to pay the said amount, 12% simple interest from the date of filing the petition

by the petitioners till the date of passing the award, to be collected from the respondent along with the award amount.

7. On perusal of the pleadings, it could be seen that the accident occurred on 20.09.1996 and the claim petition filed on 10.02.2000. Hence, there was a delay in filing the claim petition and the petitioners/claimants are not entitled to claim interest from the date of accident, as they were not chosen to file any petition within the time prescribed. Even though, the Commissioner had condoned the delay in filing the same, 12% interest from the date of accident cannot be granted to the petitioners/claimants, as the cause of action for claim arise only when they file a petition before the Commissioner. Therefore, the petitioner is entitled only for the interest of 6% from the date of filing this claim petition. Accordingly, the rate of interest is fixed as 6% from the date of filing this petition till the date of deposit.

8. In view of the above, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

raja

To

1.The Commissioner for Workmen's Compensation - II,
Chennai - 600 006.

2. The Section Officer, VR Section, High Court, Madras-104.

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.67601

+1cc to M/s.K.S.Kumar, Advocate SR.No.67277

NRL(CO)
GMY(14/02/2019)

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