

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

Coram:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1607 and 1608 of 2011

1. Smt.Govindamma

2. Krishnakumar

3. Minor.M.Arunkumar ... Appellants in
(Minor rep. by his mother
both C.M.As
Smt. Govindamma)

..vs..

1. R.Kumar

2. The Divisional Manager,
The ICICI Lombard General Insurance
Company Limited,
Chotabhai Centre, Third Floor,
No.140, Nungambakkam High Road,
Chennai-600 034.

... Respondents in
both C.M.As

Common Prayer: Civil Miscellaneous Appeal filed under
Section 30 of the Workmen's Compensation Act, 1923, against
the Judgment and Decree dated 08.11.2010 and made in
W.C.Nos.23 and 24 of 2008 on the file of the Deputy
Commissioner of Labour-I for Workmen Compensation, Chennai-
6.

For Appellants
in both C.M.As

: Mr.C.Prabakaran

For Respondents
in both C.M.As:

: No Appearance for R1

: Ms.R.Sree Vidya for R2

COMMON JUDGMENT

The Appellants have filed this Civil
Miscellaneous Appeal against the judgment and decree dated
08.11.2010 in W.C.Nos.23 and 24 of 2008 on the file of the

Deputy Commissioner of Labour-I for Workmen Compensation, Chennai-6 for raising various grounds and Substantial Questions of Law:

"a. Whether the Deputy Commissioner of Labour is right in exonerating from the liability of the Insurer to pay the compensation under the Workmen Compensation Act without any reasons?

b. Whether the Deputy Commissioner of Labour is right in accepting the death was not happened due to the involvement of the vehicle hence the 2nd respondent, Insurance Company was not liable to pay compensation without any material evidence?

c. Whether the Deputy Commissioner of Labour is right in shifting the liability to the 1st respondent, owner of vehicle to pay compensation even though the statutory obligation were fulfilled properly under the Workmen Compensation Act? "

2. The appellants / petitioners filed these petitions before the Workmen Compensation for the death of two persons namely Mahalingam, who is the husband of the first petitioner and father of the petitioners two and three herein and Karthick being the late son of the said Mahalingam.

3. The deceased persons were employed with the 1st respondent namely R.Kumar son of Rathinam, lorry owner residing at Villivakkam as driver and cleaner for the tanker lorry bearing Registration No. TN-02-Q-4272, which was insured with 2nd respondent. The said accident occurred on 06.09.2007 around 2.00 p.m., where the VAO of the Bhagaveli and Katteri Village, Walaja Taluk at Vellore District had given a complaint to the Kaveripakkam Police Station in Crime No.432 of 2007 that the dead bodies of the deceased persons were found in the pond like pit water which was stagnated by quarrying by explosives which belongs to one Kuppan of Katteri Village, Survey No.31.

4. The father and son who were driver and cleaner of the lorry respectively had gone on official duty to the said place. While nearing that place, after attending the nature's call accidentally they fell down and both of them were dead. The claimants have claimed a sum of Rs.7,00,000/- as compensation and they would content that his son Karthick was receiving a sum of Rs.7,000/- as salary and he was aged about 18 years at the time of accident. The said accident was informed to them by the 1st

respondent / lorry owner and they were in a dine situation that the father and son died due to the said accident during the course of the employment.

5. The 1st respondent has filed a counter inasmuch as he denied the accident itself. He has also stated that the accident occurred due to the rash and negligent act of the deceased persons and he also does not agree with the deceased persons' age, occupation, income, state of health both mentally and physically, nature of injuries, mode of treatment and manner of accident. He has submitted that the vehicle has been insured with the 2nd respondent and the 2nd respondent is alone liable to pay the compensation.

6. The 2nd respondent has filed a counter denying all the averments made in the claim petition. He also denied the manner in which the accident occurred and would submit that the deceased persons would not come under the Workmen classification and would submit that there is no casual connection between their death and the vehicle, the deceased being the tort feaster himself. Hence the 2nd respondent is not liable to pay for the said accident. They would also submit that the deceased persons did not die due to the accident but due to the negligence on their part which do not come as a claim payable under Workmen Compensation Act and the terms and conditions of the policy. The deceased has violated the safety rules and also the employment of the claimant under the 1st respondent at the time of the accident was not proved. He would also submit that the policy taken by the 1st respondent / lorry owner is insured only for driver as a 3rd party insurance and does not cover the cleaner as such when the terms and conditions of the policy issued. So they are not liable to pay any compensation to them.

7. The learned counsel for the 2nd respondent / insurance company would submit that the husband and the son of PW1 were working under the 1st respondent as driver and cleaner and it was proved by the evidence of the 1st respondent himself, who in his evidence has stated that Mahalingam and Karthick was a driver and cleaner under him and he was paying a sum of Rs.4000/- per month with Rs.50/- as daily batta. At the time of accident they were having RC book, driving licence and insurance policy as per the terms of IOC company, id card has also been produced and he has also produced the salary register. He would submit that as per the said policy, the 2nd respondent/insurance company is liable to pay the compensation. At the time of cross examination he has stated that the said tanker lorry has gone to Korrukupettai to Pollur and in the meanwhile both

of them died and there was no eye witness. As per the FIR only when they had gone for attending the nature's call, both of them died which clearly shows that the said accident did not occur during the course of the employment and the respondent is not liable to pay any compensation. At the time of cross examination it has been brought out that the said tanker lorry was insured with the 2nd respondent and as per the investigation, the father was the driver and son was a cleaner under the 1st respondent and at the time of work the said accident has occurred and only for the driver the coverage is there and for the son there is no coverage, so the insurance company is not liable to pay the compensation for the deceased son.

8. The learned counsel appearing for the 2nd respondent would submit that as per the policy, they were liable to pay only for the deceased father who was a driver and not for the deceased son who was working as a cleaner at the time of accident. From the postmortem report, the age of the father was taken as 52 years, since there was no eye witness for the said accident as they were taking official trip on the course of the employment, driving the vehicle to off load some materials from Korrukupettai to Pollur, the said accident has occurred and there is no contra evidence produced. It is clear that the accident occurred only during the course of the employment. As per the said documents produced by the 1st respondent, the father was earning a sum of Rs.4000/- per month with Rs.50/- as daily batta and the employer and employee relationship has been proved beyond doubt. Even though, the said vehicle was not involved in the accident since the deceased have travelled during the course of the employment and while attending the nature's call they have fallen down and died, this will also come under the insurance policy and insurance company is liable to pay the compensation. As per the said policy only the driver alone is entitled to get the compensation. Accordingly, the liability has to be fastened against the 1st respondent and not against the 2nd respondent. The commissioner has wrongly come to the conclusion, "Since the vehicle is not involved in the said accident, the insurance company is not liable to pay the compensation even though accident happened on duty". The Commissioner's finding is wrong and this Court has taken into account that only during the course of the employment they have died that too only when they had stopped the vehicle to attend the nature's call and fell down and died which makes the 2nd respondent/insurance company liable to pay the compensation. Accordingly for the death of the father, who is the driver of the vehicle the insurance company is liable to pay the compensation considering the

age factor, salary etc., a sum of Rs.2,94,900/- should be awarded to the father.

9. The learned counsel for the insurance company stated that the policy covers only for the driver and accordingly the deceased father namely Mahalingam is the driver and he is entitled for the compensation which has been fixed by the Labour Commissioner.

10. Regarding the compensation to be paid to the son namely Karthick who works as a cleaner, as per the said salary register which has been produced by the 1st respondent, the deceased father and the son were working under the 1st respondent/owner of the vehicle. Even though he being the brother, the 1st respondent was paying him a salary which has been taken as a sum of Rs.3500/- per month and accordingly amount of Rs.3,98,665/- has been fixed. When there is no contradictory evidence that the deceased son was not employed by the 1st respondent, he is entitled for compensation, which has been proved by the 1st respondent himself by producing salary register and other relevant documents. Accordingly, the 1st respondent is liable to pay the compensation to the claimant as per the amount fixed by the Commissioner of Workmen Compensation. Since there was no premium paid to the insurance company for the cleaner, the claim of compensation for deceased Karthick cannot be fastened on the 2nd respondent and only the 1st respondent/owner of the vehicle is liable to compensate Karthick/cleaner.

11. Heard, the learned counsel for the appellants and learned counsel for the respondents and perused the materials available on record.

12. On perusal of the policy schedule which has been produced by the 2nd respondent, it can be seen that the policy covers basic 3rd party liability, and paid driver, PA cover for owner-driver and premium has been paid to a sum of Rs.12,343/- which has covering period from 22.06.2007 to 21.06.2008 midnight. According to the said policy, the cleaner did not come under the coverage of the said policy. As per the submissions made by the counsel for the 2nd respondent/insurance company, it is clear that the said policy did not cover the cleaner. Accordingly the appeals are decided and the C.M.A.No.1607 of 2011 which has been filed for a claim regarding the son namely Karthick wherein an amount of Rs.3,98,665/- has to be paid by the 1st respondent within a period of three months from the date of receipt of copy of the order failing which the 1st respondent has to pay an amount of 12% interest till the

date of payment is ordered and in C.M.A.No.1608 of 2011 the amount of Rs.2,94,900 has to be paid by the insurance company within a period of three months from the date of receipt of copy of the order, is ordered. After filing a formal petition before the Commissioner of Labour, the appellants can withdraw the same.

13. Accordingly the claims filed by the appellants cannot be granted and this Court is not inclined to interfere with the orders passed by the Labour Commissioner. Accordingly, these Civil Miscellaneous Appeals are dismissed. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

The Commissioner,
Workmen's Compensation,
(Deputy Commissioner of Labour-I)
Chennai-6.

Copy to

The section officer,
VR Section,
High court
Madras

+2ccs to Mr.C.Prabakaran , Advocate SR.No. 67241, 67242

+1cc to Ms.R.Sree Vidya , Advocate SR.No. 67502

C.M.A.Nos.1607&1608 of 2011

A.SK(01/05/2019)

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