

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2022 of 2011  
and M.P.No.1 of 2011

ICICI Lombard General Insurance Company Ltd.,  
No.140, Nungambakkam High Road,  
Chennai - 600 034. .... Appellant/II Opposite Party

Vs.

M.Thenazhagan (Deceased) ..1<sup>st</sup> Respondent/Applicants

1. Kannaki

2. Mariammal

... 2<sup>nd</sup> Respondent/I Opposite Party

Prayer : Civil Miscellaneous Appeal filed under Order 30 of the Workmen's Compensation Act, 1923, against the order dated 28.02.2010 made in W.C.No.384 of 2007 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II) Teynampet, Chennai - 600 006.

For Appellant : Ms.R.Srividya  
For Respondents : Mr.K.Varadhakamaraj

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed in W.C.No.384 of 2007 dated 28.02.2010 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II) Teynampet, Chennai - 600 006.

2. According to the appellant/Insurance Company, deceased M.Thenazhagan was employed under the first opposite party. While he was traveling in three wheeler vehicle bearing registration No.TN-20-AY-0969, on 27.05.2006, he sustained grievous injuries in an accident due to the rash and negligent driving of the driver of the vehicle and later succumbed to injuries. The policy covered the driver only and the deceased was an unauthorised passenger and it does not cover a load man.

Therefore, the Insurance Company is not liable to pay the compensation.

3. Further, the deceased was not traveling in the course of employment under the first opposite party and there is no relationship of employer-employee between the first opposite party and the deceased. In view of the same, the respondents/claimants are not entitled to get compensation. Apart from the above, the percentage of disability and the delay in filing the claim petition are taken as additional grounds.

4. On 27.05.2006, while the deceased was traveling as a cleaner-cum-load man in a load auto, he sustained grievous injuries in the accident, which happened due to the rash and negligent act of the driver of the auto. On the basis of those injuries, the said Thenazhagan filed a claim petition on 09.07.2007. Thereafter, he died due to the injuries suffered by him and the respondents/legal representatives were impleaded as parties. The Insurance Company denied the liability and the quantum of compensation made by the claimants and sought to dismiss the claim.

5. Before the authority, to prove the case, the claimants examined themselves as W.W.1 to W.W.3 and marked the documents from Exs.W1 to W8. On the side of the Insurance Company, the officer was examined as R.W.1. and the Registration Certificate was marked as Ex.R1.

6. After analysing the oral and documentary evidence, the authority had come to a conclusion that the claimants are entitled to get the compensation and awarded a sum of Rs.2,62,527/-. In view of the insurance coverage, it was held that the Insurance Company is liable to pay the compensation. Aggrieved over the award, the Insurance Company has preferred the above appeal.

7. The narrow scope of the appeal revolves around the issue as to whether the Insurance Company is liable to pay compensation or not?

8. According to the learned counsel for the appellant, the deceased was only a cleaner-cum-load man and the insurance coverage is only for the driver in three wheeler load auto. No premium was paid to cover the load man and therefore, they are not liable to pay the compensation. Further there is no employer and employee relationship and the travel was not arising out of and during the course of employment.

9. On a perusal of evidence of R.W.1, it is seen that the first opposite party have informed that the deceased was an employee under him and while he was employed as a cleaner-cum-

load man, he met with an accident and consequently, died. The authority, under the Workmen's Compensation Act, based on the evidence of W.W.1 and R.W.1, has come to a conclusion that the deceased was an employee under the first opposite party and the insurance policy covers the employees also. Since the accident had taken place when the policy was in force, the Insurance Company was directed to pay the compensation.

10. On a perusal of the policy, it is seen that the Insurance was taken under the Motor Vehicles Act and not under the Workmen's Compensation Act. As per Section 147(1)(b) of the Motor Vehicles Act, 1988, it is the statutory obligation of the insurer to pay the compensation to the coolies or employees of the insurer, as they are compulsorily covered under the Act.

11. A judgment of High Court of Karnataka in the case of National Insurance Co.Ltd Vs. Maruthi & Others reported in 2012 ACJ 1408 has categorically held that when the intention of the legislation was to cover compulsorily all the risks arising out of the use of the motor vehicle and that the liability of the insurer is coextensive with that of the insured subject to Section 147(1)(b), coolies or employees are compulsorily covered. Therefore, in the absence of any exclusion by the Insurance Company to exclude the liability of the insurer to cover the coolies employed for loading and unloading, the Insurance Company is liable to pay the compensation, as it is a statutory obligation.

12. In the instant case, it is well proved that the deceased was employed as cleaner-cum-loan man and covered by the policy of insurance. Therefore, the substantial question of law raised by the appellant B) whether the learned Commissioner has failed to appreciate that the policy did not cover any workman except the driver? and C) whether the learned Commissioner has erred in holding that the appellant is liable to pay the compensation? are not sustainable.

13. Insofar as the award of compensation is concerned, the authority has applied proper factor corresponding to the wage of the deceased and taking a salary as Rs.3,689/ under the Minimum Wages Act and fixing disability at 70% based on Ex.W5 - disability certificate, Ex.W6 - x-ray sheet and Ex.W2 - discharge summary.

14. I do not find any infirmity in the order dated 28.02.2010 made in W.C.No.384 of 2007 passed by the the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II) Teynampet, Chennai, under the Workmen Compensation Act, and therefore, the award does not require any interference.

15. In fine, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-  
Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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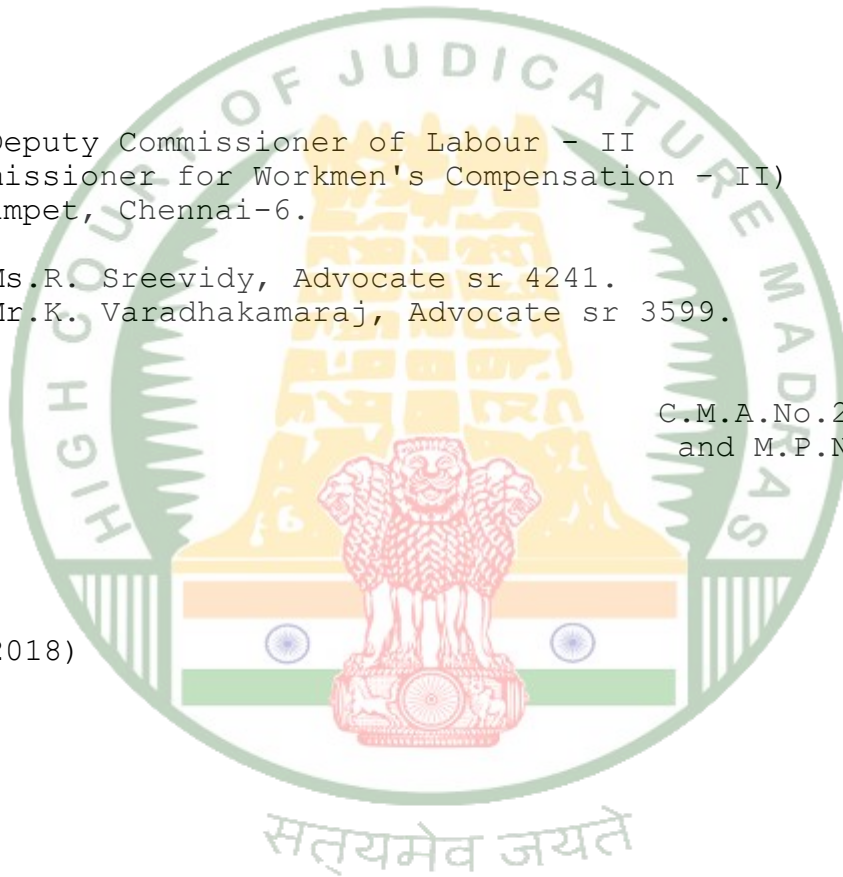
The Deputy Commissioner of Labour - II  
(Commissioner for Workmen's Compensation - II)  
Teynampet, Chennai-6.

+1 CC to Ms.R. Sreevidy, Advocate sr 4241.

+1 CC to Mr.K. Varadhakamaraj, Advocate sr 3599.

C.M.A.No.2022 of 2011  
and M.P.No.1 of 2011

SSD (CO)  
SP (07/05/2018)



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