

IN THE HIGH COURT OF JUDICATURE AT MADRAS

31.08.2018

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. 2827 of 2011
and M.P.1 of 2011

The New India Assurance Co Ltd,
Ram Complex,
No.29, Paramathy Salai,
Namakkal.

.. Appellant/
2nd opponent party

Vs

1.Tmt.Pavayee
2.Thiru.Veerappan

...Respondents 1 & 2/
Appellants 1&2

3.Thiru.V.Subramani

....3rd Respondents/
1st opponent party

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, against the order made in W.C.N.442 of 2007, dated 31.05.2010 (received on 03.08.2010), on the file of the Commissioner for Workmens Compensation, Deputy Commissioner of Labour, Salem.

For Appellant : MR.N.Vijayaraghavan

For Respondents : Mr.C.Thangaraju for R1
R2 - Died
R3 - Exparte

JUDGMENT

The Civil Miscellaneous Appeal has been filed, against the order made in W.C.No.442 of 2007, dated 31.05.2010, on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Salem, placing various grounds.

2. The Civil Miscellaneous Appeal was admitted on the following substantial questions of law:-

"a)Whether the Lower Court has grossly erred in holding that the victim was employed with the brother/3rd respondent and the claim by parents was sustainable in law.

b)Whether the court has grossly erred in allowing the claim without any proof/medical evidence to show that the death of the victim had arisen out of employment."

3. The father and the mother of the deceased person are the claimants in the claim petition. The case of the claimants was that, the deceased Pandian was working as a Driver with the first respondent in a Tuskder Gold Vehicle bearing Reg.No.KA 01 AA 4478. While, duty on 09.08.2006 at about 4.00 P.M. at Gorimedu, near Karthik Transport Office, the deceased was waiting for a return load and at that time suddenly collapsed as he sustained massive heart attack due to heavy workload offered to him. The deceased was admitted in the Rani Hospital and later he died on the same day. The said accident had occurred within the jurisdiction of Grand Bazar, Police Station limit, Pondicherry and a case was also registered vide Cr.No.325/06 u/s.174 Cr.P.C. Due to the death of their son, the claimants are living a miserable life by loosing the only beloved and breadwinner of the family.

4.They would further contend that the said accident occurred only during and arising out of the said employment as a driver with the first respondent (third respondent herein). While, he was working with third respondent, the deceased person was only 37 years old and at the time of the incident, his income was Rs.6,000/- per month and he earned Rs.100/- per day as batta. The claimant claimed Rs.6,00,000/- as compensation for the death of their son. They would further contend that the first respondent/3rd respondent herein being the owner and the second respondent/appellant herein being the Insurance company, they are liable to pay the compensation to the claimants.

5. The first respondent/3rd respondent herein did not file any counter statement and the second respondent/appellant herein filed a counter before the Deputy Commissioner of Labour. The Insurance company/appellant herein denied the accident itself and they would submit that the deceased was not working as a driver and he was also a co-owner of the lorry, the deceased person and the first respondent are brothers and they are the owners of the lorry and both of them have gone to Pondicherry only for looking after the condition of the lorry and not as a driver. Since, the claimants are failed to prove that the driver of the lorry was actively on work and from where the lorry was transporting and delivery of the load was not proved. They denied the said incident at all and only for unlawful gain, the

claim petition has been filed by both the claimants and the owner and the deceased persons are brothers and their parents being the claimants, the Insurance Company sought for dismissal of the same stating that Insurance Company is not liable to pay any compensation to the employees losing their life due to heart attack. There was no documents produced to prove that the deceased had admitted at Rani Hospital and then for specialized treatment he was referred to Pondicherry Government Hospital and admitted as in-patient at Emergency ward, all the averments made were also denied and the salary being paid by the owner was also questioned by the second respondent.

6. The Labour Court, after considering the evidence has come to the conclusion that as per the policy for the said vehicle KA 01 AA 4478, it was registered for the period from 05.08.2006 to 04.08.2007 and on the date of accident on 09.08.2006, the policy was very well in existence and the liability exists. The deceased was working as driver has been proved beyond doubt and as such the insurer has to pay the compensation to the claimants. The Labour Court also given a finding that even though the deceased and the first respondent were brothers, the said deceased was working as a driver when he was traveling from Mumbai to Pondicherry after taking load from Mumbai and he has been waiting for a return of load to some other area from Pondicherry. The deceased, due to heart attack, died and there was no evidence produced by the second respondent Insurance Company regarding the non existence of any relationship of employer and employee between the parties. Since, the deceased was driving a heavy vehicle and he has been driving the vehicle from Mumbai to Pondicherry, the same would have caused the heart attack which was arising out of employment due to which he died, and as per the said finding the Tribunal has awarded a sum of Rs.3,70,840/- as compensation.

7. The New India Insurance Company, who is aggrieved by the said order, has filed this Civil Miscellaneous Appeal before this court by raising various grounds stating that the Lower court has grossly erred in awarding a huge sum of compensation, when there exists no employer and employee relationship between the third respondent and the victim and the claim should not be accepted. There is no employer and employee relationship and when it was not proved that the death was arisen out of the employment with the third respondent, the Labour Court ought not to have awarded such a huge sum of Rs.3,70,840/-. As per Section 170 Motor Vehicles Act, 1988, the insurer has every right to file the appeal before this court and liability of the insurer has not been proved by the claimants and this appeal has to be allowed.

8. It could be seen from the findings of the Lower Court that

there was no contra evidence let in by the Insurance Company that the victim and the owner of the vehicle namely the third respondent are brothers and therefore, there was no relationship of employer and employee exists between the third respondent and the deceased and therefore, the claim by the appellant is not sustainable in law, which was rightly considered by the Labour Court and has given a finding that the victim was a driver with the third respondent at the time of his death and in the absence of any documents to prove the salary of the victim as per the Act, the same has been fixed by the Labour Court at Rs.6000/-. When there was no contra evidence, the Labour Court has rightly observed so and awarded the same by calculating the Minimum Wages as per the Act.

9. When there is a medical report stating that the deceased had massive heart attack and he was admitted in the hospital and postmortem has been done, which has been produced before the Labour Court and categorical finding was given that the death is due to stress arising out of the employment, wherein the deceased had travelled from Mumbai to Pondicherry taking the load and after unloading and waiting for any further load to be taken from Pondicherry to some other area, which has not been denied by the Insurance Company the same could be allowed. Accordingly, the questions of law raised by the Insurance Company are being answered in favour of the claimants and against the Insurance Company.

10. Under the above circumstances, the Civil Miscellaneous Appeal fails and the same is dismissed. The compensation awarded by the Commissioner for Workmen's Compensation, Deputy Commissioner, Salem in W.C.N.422 of 2007 dated 31.05.2010 is hereby confirmed. Since the appellant/Insurance Company has already deposited the compensation amount and not deposited the interest, only 12% interest has to be deposited by them within a period of 8 weeks from the date of receipt of copy of this order. The claimants/parents of the deceased are equally entitled to the compensation amount with proportionate and accrued interest. The claimants are permitted to withdraw their share, by filing a formal petition before the Labour Court.

With the above observations, Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

mp/ssb

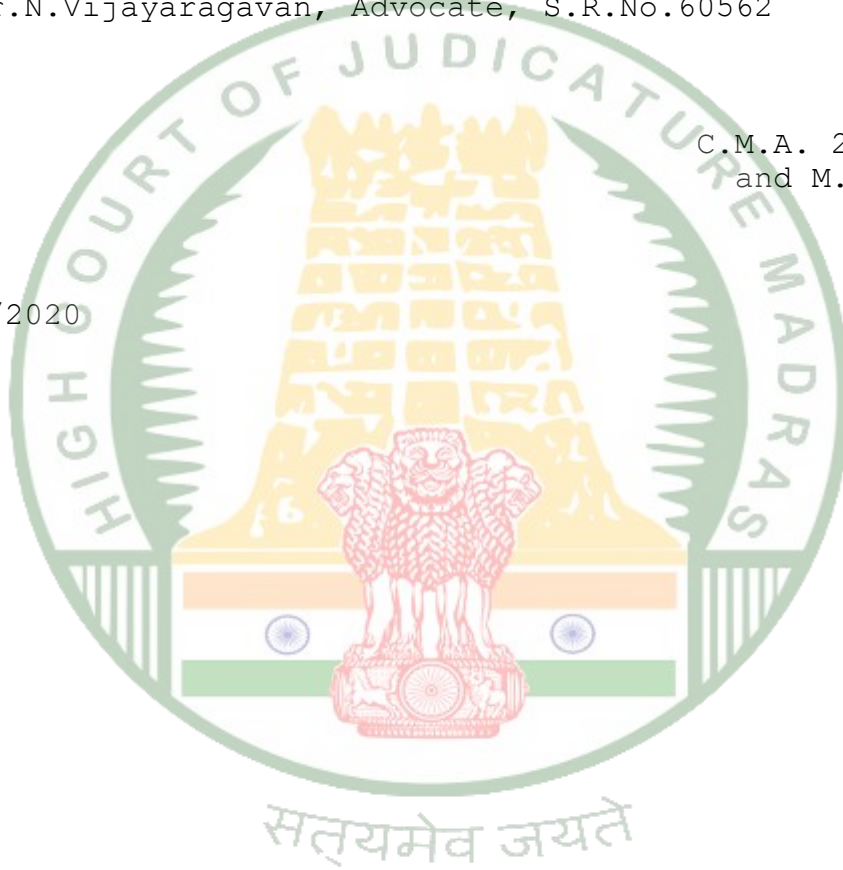
To

1. The Commissioner,
Workmens Compensation,
Deputy Commissioner of Labour,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Vijayaragavan, Advocate, S.R.No.60562

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and M.P.1 of 2011

KKV/17/07/2020



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