

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 750 of 2015

1. Rajeshwari
 2. Minor Sneka
 3. Minor Kavini
- (Minors rep. by NF/mother Rajeshwari) ..Appellants

Vs.

1. P. Sengodan
2. M/s. Royal Sundaram Alliance
Insurance Company Limited,
Sundaram Towers,
45 & 46, Whites Road,
Chennai - 14. ..Respondents

Prayer: Civil Miscellaneous Appeal filed to set aside the award passed in W.C. No. 620 of 2009 dated 27.02.2013 by the Deputy Commissioner of Labour, Salem.

For Appellants :: Mr.Ma.P. Thangavel

For Respondents:: Mrs.R. Sreevidhya
for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants as against the dismissal of Workmen's Compensation claim petition in W.C. No. 620 of 2009 filed by them for the death of the 1st appellant's husband Perumal @ Elaiyaperumal on 10.10.2009 when he was on duty as a lorry driver under the 1st respondent at Amaravathi, near Yeotmal Road, Badnera, Maharashtra State.

2. The deceased Perumal @ Elaiyaperumal was employed by the 1st respondent as a driver in the lorry bearing Registration No. TN 34H 7755 and the insurance coverage was taken from the 2nd respondent. The said Perumal made a trip to Amaravathi in Maharashtra State for the purpose of loading on 10.10.2009. At that time, in Amaravathi, due to continuous work for more than 20 days, due to work strain and pressure, the said Perumal became ill and he was taken to Dr. Rathi Hospital at Badnera and thereafter, to Irwin Hospital, Amaravathi, where he was declared dead. In this regard, an FIR had been registered and thereafter, the claim petition was filed.

3. The 1st respondent/owner admitted the employer-employee relationship and stated that the deceased was working for the past three years as a driver of the lorry bearing Registration No. TN 34H 7755. However, the 2nd respondent Insurance Company denied the employer-employee relationship and also that Perumal died during the course of employment due to work strain and pressure.

4. The Workmen's Compensation Commissioner dismissed the claim petition on the ground that there is no evidence to show that Elaiyaperumal died due to work pressure and strain and also non-production of any record by the 1st respondent to show that the deceased was under his employment at the time of death.

5. The following substantial questions of law arise for consideration in this appeal:

(i) Whether the DCL, Salem is correct in dismissing the application in total, when it is specifically pleaded and proved by P.W.1 as well as R.W.1 evidence that the deceased died due to the over work and strain and fainted?

(ii) Whether the DCL, Salem is correct in dismissing the entire claim application for non-production of the medical treatment in Dr. Rathi Hospital at Badnera and Irwin Hospital at Amaravati, where there was no treatment taken at all?

(iii) Whether the DCL, Salem is correct in not awarding interest @ 12% after 30 days from the date of accident?

6. A perusal of the records, especially, Ex-P2 FIR would show that the deceased brought the lorry bearing Registration No. TN 34 H 7755 for loading to Amaravathi, Maharashtra State and he became ill suddenly and he was taken to the hospital, where he was declared dead. The relevant portion of FIR reads as hereunder:

"முதல் தகவல் அறிக்கையில் (ம.சா.ஆ.2) காணப்படும் on-site panchnama y;.
@Deceased - Eliya Perumal Sellamuthu Age - 42 years, R/o. Naganallur, Trichy, Tamilnadu. On 10.10.09, his health suddenly got unwell and was admitted at Irwin Hospital Amravathi where he died. Site was shown by A. Wahid S. Ismayeel, age - 35 years, R/o. Old Society, Badnera. Site - Murugal Transport, Yeotmal Road. On 10.10.09, deceased had brought truck No. TN 34H 7755 for loading suddenly his health got spoilt and was admitted at Dr. Rathi Hospital Badnera, where he became serious, so was brought to Irwin Hospital Amravati where he was declare dead. On seeking closely, no signs or suspicions seen on body" என்று குறிப்பிடப்பட்டுள்ளது".

When it is admitted by all the parties that the lorry belongs to the 1st respondent and it was taken to Maharashtra by the deceased, it proves that he was employed as a driver under the 1st respondent and he took the vehicle for loading purpose to Amaravathi. If the deceased had not been employed under the 1st respondent, the vehicle would not have gone into the hands of the deceased and he would not have taken the same to Maharashtra State. Even in the absence of any evidence by the 1st respondent owner, Ex-P2 FIR itself would prove the same. Further, it is fortified by the evidence of the wife of the deceased namely, Mrs. Rajeswari, who was examined as P.W.1. Therefore, this Court comes to the conclusion that the deceased was employed by the 1st respondent and there existed employer-employee relationship between them.

7. The 1st respondent, owner, has categorically stated in his evidence that the deceased alone took the vehicle from Tamil Nadu to Maharashtra and no other alternate driver was available and this itself would go to show that the deceased had driven the vehicle continuously from Tamil Nadu to Maharashtra for loading and because of that, he became ill and died. Eventhough in Ex-P10, postmortem report, it is stated that cause of death is not known, the circumstancees under which the deceased died have to be taken into consideration. As stated above, as a single driver, he had driven the vehicle from Tamil Nadu to Maharashtra for the purpose of loading and if a single driver had driven the vehicle, definitely there would have been strain and pressure and any layman would understand the same. It does not require any medical evidence. Moreover, the cause of death could be due to cardiac arrest or anything else, but there cannot be two opinions that death was due to strain and pressure. Therefore, the Workmen's Compensation Commissioner cannot expect direct evidence in this regard and it has to be culled out from the circumstances. Moreover, the death had occurred not within the State and the 1st appellant, who is an uneducated lady, would not have been in a position to look for all those doucments and file the claim before the Workmen's Compensation Commissioner. Her main aim would have been only to bring the body of her husband and therefore, the direct evidence, as expected by the Workmen's Compensation Commissioner is not possible. Moreover, the Law of Evidence is not strictly applicable to the proceedings before the Workmen's Compensation Commissioner as it is only a summary proceedings. Therefore, the evidence produced by the appellants are enough to conclude that the deceased died due to strain and pressure caused due to work.

8. It is evident from Ex-P10, postmortem certificate and Ex-P6, Driving Licence that the deceased was aged about 42

years. The relevant factor for the said age is 178.49. The accident had occurred on 10.10.2009. Eventhough the appellants claimed that the deceased was earning a sum of Rs.4000/- as salary, the oral evidence given by both the 1st appellant as well as the 1st respondent is to the effect that the deceased was drawing Rs.5000/- as salary including batta. Therefore, batta has to be taken away from the salary component Rs.5000/-. Under the Workmen's Compensation Act, Rs.4000/- is the maximum wages prescribed and hence, Rs.4000/- is taken as monthly salary apart from batta of Rs.1000/- and "Loss of Income" is calculated as hererunder:

Loss of Income :: Rs.5000 x 50/100 x 178.49
 :: Rs.4,46,225/-

A sum of Rs. 5000/- is awarded towards "Funeral Expenses". Hence, the total compensation payable would be Rs.4,51,225/-. The substantial questions of law (i) & (ii) are hereby answered in favour of the appellants.

9. As far as the rate of interest is concerned, following the judgment of the Honourable Apex Court in Pratap Narain Singh Deo V. Srinivas Sabata reported in 1976 (1) SCC 289 as well as Oriental Insurance Company Limited V. Siby George reported in 2012 (2) TN MAC 395 (SC) : AIR 2012 SC 3144 and Jaya Biswal and Others V. Branch Manager, Iffco Tokio General Insurance Company Limited & another reported in 2016 1 TN MAC 289, it shall be 12% on the compensation amount, after 30 days from the date of accident. The substantial question of law (iii) is also answered in favour of the appellants. The Civil Miscellaneous Appeal is allowed. No costs.

10. The 2nd respondent is directed to deposit the entire compensation amount along with interest and costs, before the Commissioner, within a period of four weeks from the date of receipt of a copy of this order. Since the 2nd and 3rd appellants would have attained majority by now, the appellants are equally entitled to the compensation amount and the Workmen's Compensation Commissioner is directed to transfer the amount to the account of the appellants through RTGS within one week from the date of deposit of the amount by the 2nd respondent Insurance Company.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

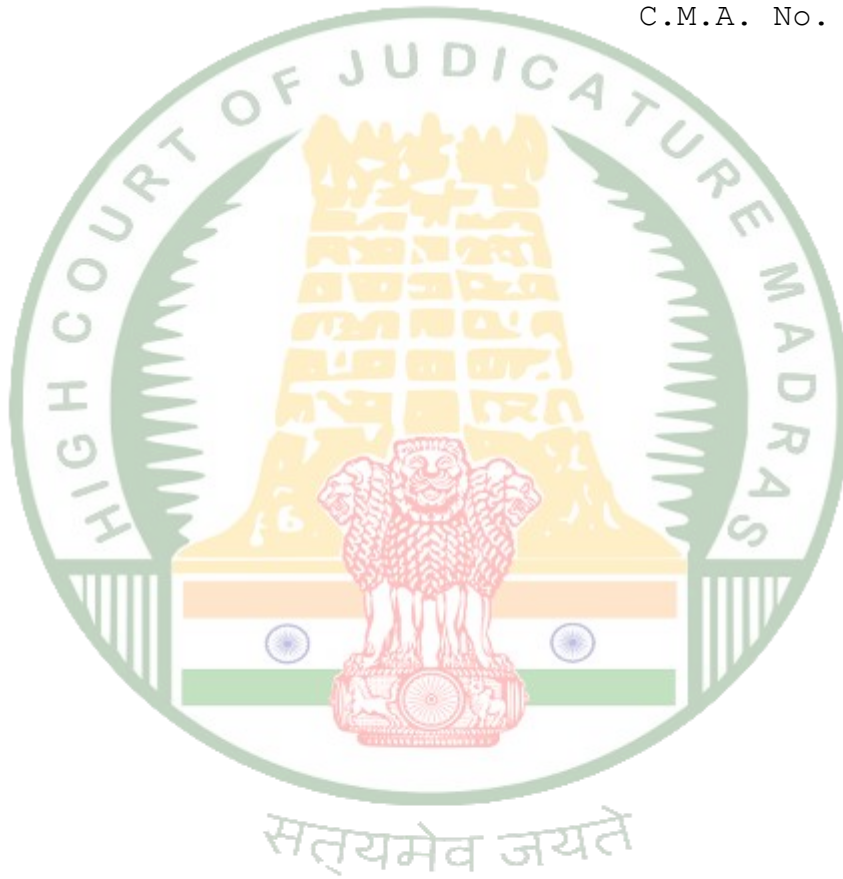
nv

To
The Deputy Commissioner of Labour,
Salem

+1cc to M/s.Ma.P.Thangavel, Advocate SR.No.16855
+1cc to M/s.R.Sreevidhya, Advocate SR.No.17000

NRL (CO)
sm:2.11.2018

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