

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.848 of 2011
and M.P.No.1 of 2011

The Manager,
National Insurance Co. Ltd.,
No.751, Anna Salai, Chennai - 600 002. ... Appellant/R2

Vs.

1. S. Vasuki
- 2.Minor Divya ... RR1 & 2 /Petitioners
Rep. by mother & guardian S.Vasuki
3. Appavu ...3rd Respondent/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 06.12.2010 made in W.C.No.16 of 2009 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - II) Chennai.

For Appellant : Mr.M.Krishnamoorthy

For 1st Respondent : Mr.S.Udhayakumar

J U D G M E N T

Challenging the award of compensation made in W.C.No.16 of 2009 dated 06.12.2010 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - II) Chennai, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. According to the 1st claimant, her husband was employed as Office Assistant-cum-Driver under the 2nd respondent. While he drove the Car bearing Registration No.TN-22-V-0401 on 27.06.2007 between Chennai and Sirkali on the ECR Road, he met with an accident and suffered death. A First Information Report (FIR) was registered. The Car was covered by the insurance

policy issued by the appellant and therefore, a claim was laid for compensation, on the death of her husband during the course of employment.

3. The 1st respondent/owner of the car and the 2nd respondent/ Insurance Company have denied the claim on the ground that there was no employer-employee relationship between the deceased and the 1st respondent.

4. To prove the claim, the 1st claimant examined herself as P.W.1 and marked Exs.A1 to A5. On the side of the respondents, owner of the car, his son and two other officials of the Insurance Company were examined as R.W.1 to R.W.4 and marked documents as Exs.R1 to R5.

5. The Tribunal found that the deceased was an employee under the 2nd respondent and thereby he is entitled to compensation.

6. The Insurance Company has challenged the award on the following substantial questions of law:-

1. Whether an application under W.C. Act is maintainable when there was no employer employee relationship?
2. Whether the claim for compensation can be entertained without any documentary evidence to prove that the deceased was a workman and that the impugned accident occurred out of and in the course of employment?

7. Heard the learned counsel appearing for both parties.

8. On a perusal of materials available on record, it is seen that the 1st claimant has marked five documents: Ex.A1 - First Information Report (FIR), Ex.A2 - Postmortem Certificate, Ex.A3 - Legal heirship Certificate, Ex.A4 - Death Certificate, Ex.A5 - Inspection Report of Motor Vehicles Inspector, other than these, no other documents were marked to prove that the deceased was an employee under the 1st respondent.

9. A perusal of Ex.A1, FIR, would go to show that it was lodged by brother of the deceased at the earliest point of time. The contents of the FIR reveal that the deceased borrowed a car from his friend and driven the vehicle and met with an accident. The authority under Workmen's Compensation Act has relied much on Ex.R4, the claim form, and the policy attached to the claim form.

10. According to the authority below, as per the contents

of the policy with regard to legal liability under Workmen's Compensation to the driver, an additional premium of Rs.25/- was paid. Therefore, on the basis of the entry in the claim form and that the vehicle was driven by the deceased and also the payment paid under Workmen's Compensation for driver, the authority held that the deceased was employed as a driver under the 2nd respondent. But, on a thorough perusal of the above-said document and Ex.R4, claim form, it could be seen that the deceased was shown as a driver driving vehicle at the time of accident, but, as to relationship of the driver is concerned, under column 3, sub-clause (d) he was shown as "friend". Therefore, the claim form could only reveal that the vehicle was driven by the deceased at the time of accident, and the car belongs to his friend.

11. The conjoint reading of Ex.A1 - FIR, Ex.R4 - claim form would go to show that the deceased had borrowed a car from his friend in order to go to his native place on a personal trip. More over, the owner of the vehicle viz., the 2nd respondent was not at all available in India at that point of time. But curiously, the authority went on to substantiate his finding that the deceased was an employee, on the ground that the owner's son had engaged the deceased as casual driver in his Company "rent a car", wherein, he hires cars with or without driver to outsiders. But the evidence of R.W.2, son of the owner of the car also clearly established that the deceased was not engaged by him at any point of time. Further, it is also deposed before the authority that the deceased was running a small construction company along with his brother and he also owned a car. The factum that the deceased was owning a company in the name and style of M/s.S.J.Engineers, Velachery, Chennai, stood proved.

12. From the consideration of all these materials, it can be inferred that the claimants have failed to prove that there was employer-employee relationship between the 2nd respondent and the deceased. On the other hand, it is categorically established by the employer as well as the Insurance Company that no such relationship existed. The claimant had not examined any independent witness, such as co-worker to prove that the deceased was an employee under the 2nd respondent, much less engaged as such by the 2nd respondent's son. It is also not proved by the claimants that the deceased met with an accident during the course of employment and arising out of employment.

13. In the absence of any proof, the finding of the authority under Workmen's Compensation is erroneous and without any legal evidence. In such circumstances, the substantial questions of law raised in this appeal are answered in favour of the appellant. Consequently, the order dated 06.12.2010 made in

W.C.No.16 of 2009 by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - II) Chennai, is set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed and the appellant is entitled to get refund of the amount deposited before the authority along with accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

asi

To

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

+1cc to Mr.S.Udaya Kumar, Advocate SR.No.19443

C.M.A.No.848 of 2011
and M.P.No.1 of 2011

EV(CO)
GN(26/04/2018)

सत्यमेव जयते

WEB COPY