

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-02-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No. 406 of 2018

and

C.M.P.No.3669 of 2018

M/s.United India Insurance Company Limited,
'Sillingi Buildings'
No.134, Greams Road,
Chennai.

... Appellant

Vs

1.Thirumathi.Pandykannu

2.Minor.Manoj Kumar

3.Minor.Ramya Devi

Both minors represented by their mother and guardian
Tmt.Pandykannu.

4.Thirumathi.Gandhimathi

5.Thiru.Gopalakrishnan

... Respondents

PRAYER :

Civil Miscellaneous Appeal filed to set aside the final award dated 01st September, 2017, (received on 23.11.2017) passed by the Commissioner for Employees Compensation (Learned Deputy Commissioner of Labour - I), at Chennai, in E.C.No.182 of 2013.

For Appellant : Mr.R.V.Sivaraj,
for Mr.J.Michael Visuvasam

J U D G M E N T

This appeal has been preferred by the insurance company against the award of Rs.7,13,962/- as compensation to the legalheirs of deceased Mr.Venkatesan, who was employed by the second respondent to drive his car, which met with an accident on 23.07.2013. Due to that accident, Mr.Venkatesan died. Therefore, the claim petition was filed. On contest, the Workmen's Compensation Commissioner awarded a sum of Rs.7,13,962/-. The said award is being challenged before this Court.

2. The following substantial questions of law have been raised by the appellant in this appeal:

1. Whether the finding of the learned Deputy Commissioner of Labour that Late.Venkatesan was employed under the V respondent can be sustained, when the same was not established by documentary evidence either by the respondents I to IV/claimants or the V respondent/employer?

2. Whether the direction of the learned Deputy Commissioner of Labour to the Appellant, to pay interest at 12% per annum, from 30 days after the accident can be sustained, when the owner of the vehicle had also failed to report the alleged road traffic accident and death of his alleged employee to the appellant?

3. Mr.R.V.Sivaraj, for M/s.Michael Visuvasam, learned counsel for the respondent, very strenuously argued and tried to convince this Court that Workmen's Compensation Commissioner ignored the law and did not award reasonable compensation.

4. In the claim petition, it was stated that the deceased was employed by the 2nd respondent herein to drive his car bearing Reg. No.TN 02 AB 0356 and on 23.07.2013, the car met with an accident with stationary Swaraj Mazda Van, due to which Mr.Venkatesan, the 1st respondent's husband died. The same was opposed by both the appellant as well as by the 5th respondent owner. The appellant contended that there was no employer and employee relationship between the deceased Mr.Venkatesan and the 5th respondent owner and in fact Shri Ramachandra Hospitals was the employer of the said deceased as it is revealed in FIR, Ex.P.4 , given by a co-worker viz., one Kailash.

5. However, PW1 wife of the deceased categorically stated that the deceased was employed only by Mr.Gopalakrishnan, 5th respondent herein and the said vehicle was under the contract of Shri Ramachandra Hospitals. An official from Shri Ramachandra Hospitals was summoned and examined as CW1 and he had deposed that the vehicle was under the contract of Shri Ramachandra Hospitals and Mr.Venkatesan was employed by MJ Ambulance Service, which is owned by one Mr.Gopalakrishnan. Though, RW1 examined by the appellant, denied those allegations, it is evident from the evidence of PW1 as well as CW1 (an official from Shri Ramachandra Hospitals) that the vehicle belongs to the 5th respondent and the 5th respondent was running M.J. Ambulance

Service, which was under the contract of Shri Ramachandra Hospitals.

6. Moreover, it is a fact, admitted by all the parties that the vehicle belongs to the 5th respondent and is insured with the appellant, as per Ex.P.2. When the vehicle is owned by 5th respondent and the deceased was driving the vehicle, even in the absence of any evidence, the presumption is that the deceased was under the employment of the 5th respondent, Mr. Gopalakrishnan.

7. Though, in Ex.P.4, FIR, it has been stated that the deceased and Kailash were employed by Shri Ramachandra Hospitals, it has been made clear by PW1 as well as CW1 that the vehicle belonged to Mr. Gopalakrishnan and the vehicle ran under the agreement with Shri Ramachandra Hospitals. Therefore, the Workmen's Compensation Commissioner rightly reached the factual finding that the deceased was an employee under the 5th respondent, Mr. Gopalakrishnan, who is the owner of the vehicle and there existed employer-employee relationship. Therefore, the first question of law raised by the appellant is not sustainable and the same is answered against the appellant. Since there was an existing insurance coverage, as per Ex.P.2, the Workmen's Compensation Commissioner made the appellant liable to pay the amount as the workman died during the course of employment under the 5th respondent, who had insured the vehicle with the appellant.

8. As far as the monthly income is concerned, as per the Tamil Nadu Government's order in G.O.(2D)No.64, L&E (J1) dated 23.07.2009, issued under the Minimum Wages Act, the Workmen's Compensation Commissioner, in the absence of any evidence by the parties regarding income of the deceased rightly determined a sum of Rs.7,699/- as monthly income. Since Ex.P.5, post mortem report speaks about the age of the deceased as 40 years, the relevant factor 184.17 has been rightly applied and the compensation was rightly determined at Rs.7,13,962/- and 12% interest has been awarded by the Commissioner, as per the judgment of the Hon'ble Supreme Court in Pratap Narain Singh Deo Vs. Shrinivas Sabata, reported in 1976 ACJ 141 (SC) and therefore, the second question of law is also answered against the appellant.

9. For the reasons stated above, the appeal fails and the same is dismissed. The Workmen's Compensation Commissioner is directed to transfer the compensation amount, deposited by the

appellant, as per the ratio fixed by him to the respective legal heirs of the deceased, Mr.Venkatesan through RTGS. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Employees Compensation
(Learned Deputy Commissioner of Labour - I)
Chennai,
2. Thirumathi. Pandykannu,
Wife of Late.Venkatesan,
No.2/75, Nanamadai,
Aakkavayal, Ilayankudi Taluk,
Sivagangai District.
3. Tmt.Pandykannu,
W/o Late.Venkatesan,
(representing Minor(1).Manoj Kumar,
S/o.Late.Venkatesan &
Minor(2).Ramya Devi, D/o.Late.Venkatesan,
Both minors represented by their
Mother & Guardian Tmt.Pandykannu)
No.2/75, Nanamadai,
Aakkavayal, Ilayankudi Taluk,
Sivagangai District.
4. Tmt.Gandhimathi, M/o Late.Venkatesan.
No.2/75, Nanamadai,
Aakkavayal, Ilayankudi Taluk,
Sivagangai District.
5. Thiru. Gopalakrishnan,
No.14/25, Rengarajulu Street,
Aminjikarai, Chennai-600 029

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.15184

C.M.A.No. 406 of 2018

SKS(CO)
CS/26/03/18