

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2088 OF 2010
AND M.P.NO.1 OF 2010

M/s.United India Insurance Co. Ltd.,
No.280, Main Road,
Mettupalayam.

... Appellant

Vs.

1.Perumal
2.Saraswathi @ Sarasal
3.Mariamammal @ Marimuthu
4.Minor Thilagavathi
5.Minor Subash

(Minor respondents rep. by mother
and NF 3rd respondent)

6.K.S.Damodharan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order made in W.C.No.54 of 2008 dated 25.02.2010 on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 2-5: Mr.Ma.Pa.Thangavel

J U D G M E N T

Challenge in this Civil Miscellaneous Appeal is the award passed in W.C.No.54 of 2008 dated 25.02.2010 on the file Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Coimbatore.

2. The insurance company is the appellant herein. The deceased employee was working as a Driver in the vehicle belonging to the sixth respondent. During the course of employment, on 27.01.2008, the deceased, had gone to have breakfast. While crossing the road, he met with an accident and died in the hospital. The authority below had found that the accident had taken place during the course of employment and the employment died in the accident. Based on the evidence of the

wife of the deceased and on the basis of Exs.P1 to P8, the authority has held that the claimants are entitled to compensation and fastened liability on the insurer of the vehicle, namely, the appellant herein.

3. The appellant insurance company would contend that the lorry insured was not involved in any accident, and the deceased was hit by some other motorcycle, due to his negligence and therefore, they are not liable to pay compensation and the theory of notional extension could not be applied to the facts and circumstances of this case.

4. I have considered the submissions made on either side and perused the materials available on record.

5. It is clearly admitted by all the parties concerned that the deceased was working as a Driver in the vehicle belonging to the sixth respondent. The sixth respondent remained exparte and has not disputed the fact that the deceased was employed under him. It is also equally admitted that the deceased had taken the vehicle as per the instructions of the owner of the vehicle and he possessed valid driving license. The vehicle was insured with the appellant. The only question is that whether the accident had taken place during the course of employment and arising out of the employment or not.

6. As mentioned above, the Driver of the vehicle had parked the vehicle for taking food at Annur. There is no other reason for the driver to be at that place other than discharging his duty. Stopping the lorry for the purpose of taking food and walking across the road are all connected to the work and any accident that happens during that period shall be construed to have taken place during the course of employment. It has reasonable nexus to his employment and theory of notional extension would certainly apply to such incidents. Therefore, the finding of the authority that the accident had taken place during the course of employment and arising out of employment does not suffer any infirmity. It is not necessary that the vehicle insured shall meet with an accident, but the object of the Act is to give the benefit to the employees, who suffered accident during and arising out of employment.

7. In the instant case, it is clearly proved that the deceased has suffered death during the course of employment and there is no dispute about the computation of the award amount also. While the sixth respondent / owner of the vehicle does not dispute the employment status as well as the quantum of compensation, the insurance company cannot dispute the factual events and there is no evidence on the side of the insurance company to prove the contrary. In the absence of any evidence,

this Court is of the considered opinion that the substantial questions of law raised by the insurance company are not sustainable and accordingly, answered in negative.

8. The learned counsel for the appellant would submit that they have already deposited the entire award amount. Therefore, the claimants are entitled to withdraw the same.

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

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

TK

To

The Deputy Commissioner of Labour,
Commissioner for Workmen's Compensation,
Coimbatore.

+1cc to MR.M.B.Gopalan, Advocate, sr.no.19752

+1cc to Mr.Ma.P.Thangavel, Advocate, sr.no.18896

C.M.A.NO.2088 OF 2010

EN (CO)

RRK (31/05/18)

सत्यमेव जयते

WEB COPY