

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.04.2018
Pronounced on	25.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2135 of 2012

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
having its office at Subha Govindam
Building, Imperial Road,
Cuddalore 607 002 ...Appellant/2nd Oppsite Party

Vs

1. R. Sundari,
2. Pushpa
3. Vanitha,
4. Anbarasan
5. Kuppanmala ...Respondents 1 to 5/
Appellants 1 to 5
6. R.Balakrishnan ...6th Respondent/1st Opp.Party

PRAYER: This Civil Miscellaneous Appeal under Section 30 of Workmen's Compensation Act, 1923 has been preferred against the order made in W.C.No.335 of 2007 dated 19.3.2012 on the file of the Commissioner for Workmens Compensation, Deputy Commissioner of Labour-II, Chennai;

For Appellant : M/s.C.Harini
for N.Vijaya Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order made in W.C.No.335 of 2007 dated 19.3.2012 by the appellant who is the Branch Manager of Oriental Insurance Company Limited against the award passed by the Tribunal in W.C.No.335 of 2007 dated 19.3.2012

2. The facts of the claim petition is as follows;

(a) the deceased Rajendran is the husband of PW1 who was employed as a load man under R1 and he was earning Rs.200/- per day.

(b) On the date of occurrence i.e., on 29.4.2007, by way of his employment, while the deceased was travelling in a

Tractor bearing Registration No.TCO-6291 as loadman, in the Kurinjipadi Main Road, the driver of the Tractor who drove the vehicle in a rash and negligent manner, suddenly applied brake and in this process, the deceased had fallen from the Tractor and subsequently, the rear wheel of the tractor ran over him, due to which, he sustained grievous injuries and died on the spot itself. Hence the claimants being the legal heirs of the deceased has filed an application claiming compensation.

(c) Regarding the occurrence in Kurinjipadi Police Station, a case under section 304(A) IPC was also registered. The said vehicle which caused the accident was also insured with the Oriental Insurance Company, who is the appellant herein.

(d) For the death of the deceased, the legal heirs of the deceased, as claimants has preferred a claim petition before the Commissioner for Workmens Compensation, Deputy Commissioner of Labour-II, Chennai in W.C.No.335 of 2007, wherein, it was stated that the deceased was employed under the 6th respondent who is the owner of the Tractor as a load man for loading bricks for his construction work in the motor shed and during the course of his travel in the said Tractor, due to the sudden brake applied by the driver of the Tractor, the accident occurred. Further, the driver of the said vehicle was also in possession of a valid licence at the time of accident and the tractor was also properly insured with the Insurance Company and hence the employer and the Insurance Company are jointly and severally liable to pay the compensation.

(e) Resisting the claim, the Insurance Company has filed a counter statement denying all the averments made by the claimants in the application. The second respondent being the insurance Company has stated in its counter that the vehicle involved in the accident is a tractor and the said vehicle is not a transport vehicle and there is only one seat for driver is available, whereas on the date of occurrence, five members travelled in the said vehicle and further the vehicle is also used for the purpose of loading bricks which is against the permitted rules and further in the absence of age, occupation and income of the deceased the claim cannot be awarded.

3. The tribunal based on the evidence and documents placed by both sides has observed that the deceased Rajendran met with an accident at the time of his employment under 6th respondent and the said vehicle was also insured with the Insurance Company and hence the accident occurred during the time of employment under his employer and the vehicle also was duly insured with the 2nd respondent and came to the conclusion that the compensation claimed by the claimant has to be paid

by the Insurance Company. The tribunal also taking into consideration, the age and income of the deceased, awarded a sum of Rs.3,27,745/- as compensation. Aggrieved against the liability and also the quantum of the Award, the Insurance company has preferred the instant appeal.

4. Learned counsel appearing for the appellant/Insurance Company vehemently argued that as per the policy, only one person is entitled to claim compensation which is very much mentioned in Ex.P.4 -Insurance Policy. Further the claimants have not proved the fact that the deceased was under the employment of employer/6th respondent herein and the accident also occurred at the time of his employment under employer/6th respondent. Further it is also argued by the learned counsel for appellant that in the charge sheet Ex.R1, it has been stated that the driver of the Tractor was not possessing valid licence at the time of accident. Hence, in view of the fact that as per the policy, only the driver of the vehicle alone is entitled to claim compensation and in this case, the driver of the Tractor did not possess valid licence at the time of accident and hence the occurrence happened is not binding and hence the Insurance company is not liable to pay any compensation to the claimants.

5. On perusal of the discussions and evidence made before the tribunal, it is observed that the employment of the deceased under the 6th respondent and the accident were all proved before the Tribunal by Ex.P.1-FIR and Ex.P.2- Motor Vehicle Inspection Report. During the cross examination of RW1, he has deposed that Ex.P.7 is the driving licence dated 15.3.2007 which stands in the name of P.Ashok Kumar and the Motor vehicle inspection report is Ex.P6. The said Ashok Kumar's name and address is mentioned and the particulars furnished in the driving licence as well as in the motor vehicle Inspection Report is one and the same person i.e., Ashok Kumar. Hence on the date of accident, the driver of the said vehicle was possessing a valid licence and the said vehicle was also insured with the Insurance Company/appellant herein.

6. Based on the arguments and the documents that the vehicle is used for the related purpose of agriculture, the tribunal has also given a finding that the bricks were brought only for agricultural purpose and fixed the liability on the appellant to pay the compensation is proper.

7. Hence it is proved before the Tribunal that the deceased met with an accident during the time of his employment under the owner of the the said vehicle which is insured with the 2nd respondent and based on the details furnished by the claimant, the Tribunal taking into account the age of the deceased and his monthly income at Rs.3,799/-, awarded a sum of Rs.3,27,745/- which is an appropriate and

reasonable one. Further this Court considers that no documentary evidence is required for proving that the deceased as a load man at the time of accident. Hence in view of the above finding, this Court is of the view that the Lower Court has rightly awarded the compensation for the death of the deceased and hence the same does not warrant interference by this Court.

8. In the result, the civil Miscellaneous Appeal is dismissed confirming the Award passed by the Commissioner for Workmens Compensation. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

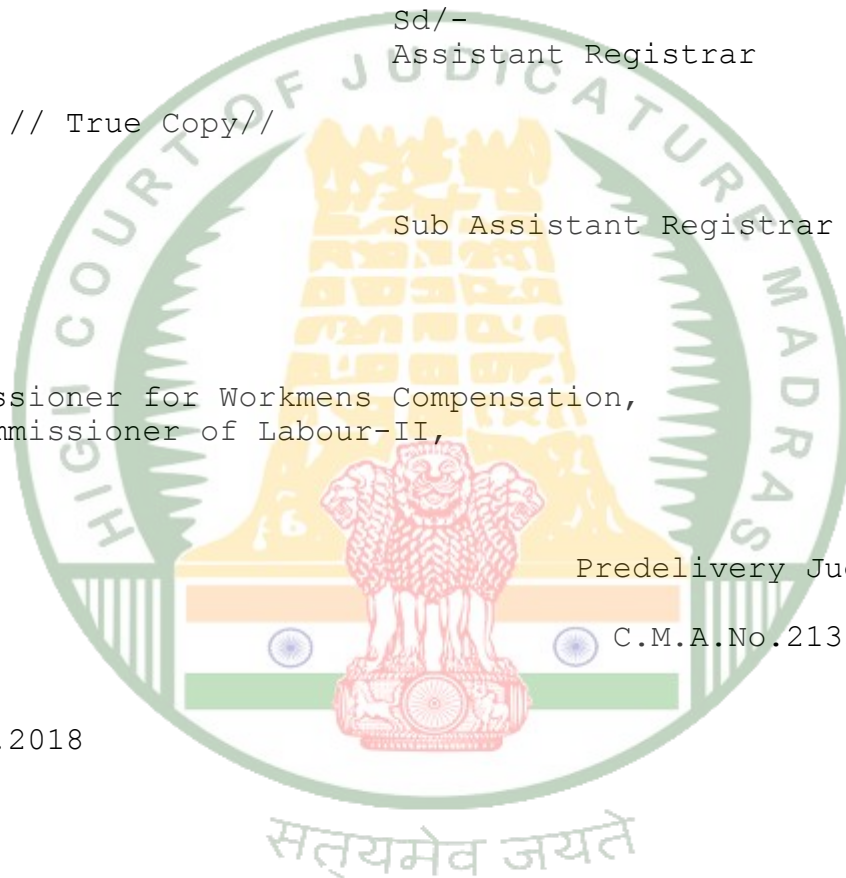
To

The Commissioner for Workmens Compensation,
Deputy Commissioner of Labour-II,
Chennai;

Predelivery Judgment in

C.M.A.No.2135 of 2012

MR (CO)
SMI/30.08.2018



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