

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2875 OF 2008

- 1.Lakshmi
- 2.Manikandan (Minor)
- 3.Balammal @ Kirthiga (Minor)

Minor appellants 2 and 3 are represented by their mother and guardian Lakshmi, first appellant. Appellants

-vs-

- 1.R.Viswanathan
- 2.United India Insurance Co.Ltd.,
Sudharson Buildings, 3rd Floor,
No.14, Whites Road,
Chennai-14. Respondents

Appeal against the award, dated 24.03.2008, passed in W.C.No.171 of 2007, on the file of Workmen's Compensation Commissioner-I/Deputy Commissioner of Labour-I, Chennai.

For appellants : Mr.P.Valliappan

For respondent 2 : Mr.S.Arun Kumar

JUDGMENT

Claimants are the appellants. First appellant is the wife of the deceased and second and third appellants are the minor children.

2. On 29.09.2006, while the deceased was employed as a driver in a lorry bearing registration No.TN23Q 6633, the said vehicle met with an accident and the deceased suffered death during the course of employment. On his death, the appellants filed a claim petition before the authority under the Workmen's Compensation Act. The first respondent admitted that the deceased was employed under him as a driver and was receiving a sum of Rs.4000/- per month, as salary. The vehicle was covered by an insurance policy, valid from 18.04.2006 to 17.04.2007. Therefore, it is contended that the insurance company is liable to pay compensation. The insurance company denied the averments made in the claim petition.

3. In order to prove the claim, on the side of appellants/claimants, the first appellant was examined herself as P.W.1 and Exs.A-1 to A-6 were marked. On the side of respondents, none was examined and no documents were also marked.

4. After considering the evidence, both oral and documentary, the authority came to the conclusion that the deceased employee was working as a driver on the date of accident under the first respondent/opposite party and that he suffered death during the course of employment and thereby the appellants are entitled to compensation. The age of the deceased was fixed as 32 years on the basis of Ex.A-5 and his income was fixed on the basis of employment. Since the insurance policy reflected the name of one Satyan and it did not stand in the name of the first opposite party, the liability was fastened on the owner of the vehicle. The total compensation was arrived at by the authority at Rs.4,12,898/-.

5. Learned counsel for the appellants would contend that as per Ex.A-3, insurance policy was transferred from the previous owner, namely, Satyan to the first respondent, namely, Viswanathan; the accident had taken place on 29.09.2006; the age of the deceased was 25 years as per Ex.A-4, driving licence, and, therefore, the award passed by the authority has to be enhanced.

6. Heard both sides.

7. This Civil Miscellaneous Appeal was admitted on the following substantial questions of law :

(1) Whether the decision of the Deputy Commissioner of Labour in absolving the insurance company from paying compensation is sustainable under law ?

(2) Whether the Deputy Commissioner of Labour has to follow the settled procedures in order to assess the just compensation payable to the claimants ?

8. From the contentions of the parties, the issue to be decided in this case is, with regard to quantum of compensation and liability to pay the same. As per Ex.A-4, driving licence, the date of birth of the deceased employee was shown as 03.04.1982. The authority has also recorded the date of birth of the deceased employee as 03.04.1982. However, while deciding the quantum of compensation, the authority relied on Ex.A-5, post-mortem certificate, and fixed the age of the deceased as 32 years. In the considered opinion of this Court, driving licence is a valid document, issued by the transport authority, and the age mentioned therein shall be given preference over the assessment of the doctors during post-mortem. Therefore, the age

of the deceased is fixed as 25 years and the corresponding multiplying factor as 216.91. In view of the change in age, the compensation is reworked as under :

$$\text{Rs.}4051 \times 50/100 \times 216.91 = 439352/-$$

9. With regard to liability to pay compensation, as per Section 157 of the Motor Vehicles Act, 1988, insurance goes along with the vehicle and the certificate of insurance shall be deemed to have been transferred in favour of the person, to whom the motor vehicle is transferred, with effect from the date of its transfer.

10. On perusal of Ex.A-3, insurance policy, it is seen, that the vehicle was transferred in the name of first respondent with effect from 01.08.2006. The date of accident is 29.09.2006 and the insurance was in force between 18.04.2006 and 17.04.2007. In that case, the vehicle was covered by insurance and the second respondent-insurer is liable to pay the compensation and not the first respondent, owner of the vehicle, as held by the authority below. Therefore, this Court holds that the second respondent-insurance company is liable to pay the compensation.

11. As per Section 4-A of the Workmen's Compensation Act, 1923, the claimants are entitled to interest on the expiry of 30th day of the accident. In view of the said statutory provision, the claimants are entitled to get interest from 30.10.2006 till the date of deposit, at the rate of 12% per annum. Accordingly, the insurance company has to deposit the sum of Rs.4,39,352/- along with interest at the rate of 12% per annum from 30.10.2006 till the date of deposit. The substantial questions of law are answered in favour of the appellants.

12. In fine, Civil Miscellaneous Appeal is partly allowed, with a direction to the second respondent-insurance company to deposit the compensation of Rs.4,39,352/- along with interest at the rate of 12% per annum from 30.10.2006 till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

dixit

To

The Workmen's Compensation Commissioner-I/
Deputy Commissioner of Labour-I,
Chennai.

2. The United India Insurance Co.Ltd.,
Sudharson Buildings, 3rd Floor,
No.14, Whites Road,
Chennai-14.

3. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.VALLIAPPAN, Advocate, S.R.No.7502
+1cc to Mr.ARUNKUMAR, Advocate, S.R.No. 7666

C.M.A.No.2875 OF 2008

MG(CO)
TR(09/04/2018)



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