

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2575 OF 2013

New India Assurance Co. Ltd.,
109, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

... Appellant

Vs.

1.S.Dharani
2.Minor Kiruthina
3.Andal
4.E.Raman Naicker
5.G.Selvam

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 07.03.2013 (received on 05.06.2013) passed in W.C.No.429 of 2008 on the file of the Commissioner for Workmen's Compensation - 2 (Deputy Commissioner of Labour - 2) Teynampet, Chennai - 600 006.

For Appellant	:	Mr.R.Sivakumar
For Respondents	:	Mr.S.Udayakumar

J U D G M E N T

Challenge in this Civil Miscellaneous Appeal is the award passed by the Commissioner for Workmen's Compensation - II, Chennai, in W.C.No.429 of 2008 dated 07.03.2013.

2. The case of the claimants is that they are the legal representatives of the deceased Sivanandham @ Janarthanan. The deceased worked as a Driver in S.P.Travels. On 30.09.2006, he has taken five persons to Kodaikanal by Toyota Qualis Car bearing Registration No.TN01-S-8267. All these people have stayed in Chitra Cottage at Kodaikanal, wherein, on 01.10.2006, he was murdered by the five persons and it came to light on the next day through the care taker of the Cottage and on

information, Police registered a case. On the death of the said Sivanandham @ Janarthanan, his wife and children have filed the claim petition. Considering the oral and documentary evidence, the Tribunal had come to a conclusion that the accident has taken place arising out of and during the course of employment and awarded compensation and made the insurer liable to pay the same. Challenging the above said award on the grounds of liability, the present Civil Miscellaneous Appeal has been filed.

3. Heard the submissions made on either side and perused the materials available on record.

4. On perusal of the materials available before this Court, it is seen that first claimant in order to prove her case, examined herself as witness A.W.1 and marked Exs.A1 to A5. On the side of the respondent/appellant herein, the insurance company examined the Investigator as R.W.1 and marked two documents. According to the insurance company, the Driver had stayed with the other persons in the Cottage by itself would show that he has gone to Kodaikanal on a pleasure trip and not on hire, as Driver of the vehicle. The employer employee relationship has not been proved by filing appropriate documents, like trip sheet, salary slip and employment certificate etc. In the absence of any proof of employment, the Tribunal ought not to have awarded compensation, much less, fastened liability on the insurance company.

5. Per contra, learned counsel for the respondents 1 to 4 / claimants would submit that a reading of the charge sheet, which is marked as Ex.A4, will prove the employment status of the deceased.

6. I have gone through the charge sheet. It reveals that the owner of the Travel company would state that the deceased was sent as a Driver on hire to Kodaikanal in the said vehicle, which is corroborated by his friend, an auto driver and other witnesses. From the perusal of Ex.A4, it is crystal clear that the deceased was employed as a Driver in S.P.Travels and that he went to Kodaikanal carrying five persons, who were accused of murder, in the criminal case. Those persons were identified by the caretaker of the Cottage at Kodaikanal. From the perusal of the over all case, it could be inferred that the deceased was employed as a Driver in the Travel company and he had carried five persons to Kodaikanal, on hire, and was done to death during the course of his employment. Therefore, the intention of the insurance company that the employer employee relation has not been proved and that the accident had not taken place arising out of and during the course of employment, is not sustainable and it is well proved that the employee died during the course of employment.

7. In such circumstances, the Civil Miscellaneous Appeal merits no consideration and accordingly, is dismissed. No costs.

8. The learned counsel for the appellant would submit that they have already deposited the entire award amount. Therefore, the respondents 1 to 4 / claimants are entitled to withdraw the same.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

TK

To
The Commissioner for Workmen's Compensation - 2
(Deputy Commissioner of Labour - 2)
Teynampet,
Chennai - 600 006.

copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate sr.no.15316

C.M.A.NO.2575 OF 2013

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