IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2645 OF 2013

M/s.National Insurance Co.Ltd. ... Appellant/Respondent

-vs-

1.Palani
2.Tmt.Kulanthai Therasa
3.Magimaidoss ... Respondents/Appellants

Appeal against the award, dated 09.03.2013, passed in W.C.484 of 2008, on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore.

For appellant : Mr.Arunkumar
For respondents 1 & 2 : Mr.S.P.Yuaraj

JUDGMENT

Challenging the award of compensation passed under the Workmen's Compensation Act in W.C.No.484 of 2008, dated 09.03.2013, on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore, the insurance company has preferred this appeal.

2. The insurance company has raised the following substantial questions of law :

(1) Whether the Deputy Commissioner of Labour was correct in holding that the appellant is liable in spite of the fact that the policy does not cover the murder ?

(2) Whether the Deputy Commissioner of Labour was correct in holding that the appellant is liable to pay compensation for the death occurring outside the purview of Section 3 (1) ?

(3) Whether the Deputy Commissioner of labour was correct in accepting the oral testimony of P.W.1 & P.W.2 in the absence of acceptable documentary evidence and third respondent being uncle of the deceased ?

(4) Whether the Deputy Commissioner of Labour was correct in directing the appellant to deposit the award amount despite the fact that the deceased did not possess valid driving licence as required under the Motor Vehicles Act ?

3. The case of the claimants was that the deceased was working as a driver for Maruti Omni Van bearing registration No.TN-30-L-2869, owned by the third respondent, who was the first respondent before the authority. On 14.02.2008, the deceased informed that he was going to Salem for hire, but did not go. On inquiry, it was found that the vehicle was hired by one Madan and, thereafter, they could not trace him. A complaint in Crime No.41 of 2008 on the file of Yercaud Police Station was filed by the first respondent and, on investigation, it was found that the deceased was murdered and the body was floating in a well belonging to an agriculturist. On the basis of the information given by the owner of the well, Veeranam police registered the F.I.R. on 17.02.2008 in Crime No.88 of 2008. The body was identified by father and wife of the deceased, who are the claimants before the authority below. The body of the deceased was found with hands and legs tied and, therefore, the police have confirmed the case of murder. The authority, while deciding the claim petition, relied on a judgment of this Court in Oriental Insurance Company Limited v. D.Sakunthala & Others, 2006 (II) LLN 28, wherein, it has been held that when a car driver, while driving, was kidnapped and murdered, that will amount to death arising out of and in the course of employment. Based on that judgment, the compensation was awarded.

4. In so far as the first question of law raised by the insurance company that the policy does not cover the murder is concerned, this Court is of the considered opinion that the driver was discharging his duty and, in the course of his employment, he was kidnapped and murdered. As held by this Court in the judgment of Oriental Insurance Company Limited v. D.Sakunthala, referred to above, murder during the course of employment shall be construed as death arising out of employment. Once the vehicle is covered by insurance, the liability to pay compensation on behalf of the employer lies on the insurance company. Even if the employee is a relative of the employer, that does not mean that there is no employee-employer relationship.

5. In the instant case, it is proved by oral and documentary evidence that the deceased was working as driver in the Maruti Omni van for more than two years and was drawing salary. The employment status has been admitted by the employer. While it cannot be questioned by the insurer without any evidence to the contrary, the issue raised about the relationship on the basis of evidence is a question of fact. In such situation, the insurance company is liable to pay compensation on behalf of the insured. As far as the contention that Ex.P-4, driving licence, which is admitted during evidence, was not a valid licence to drive as tourist is concerned, it is to be stated that the deceased was holding licence to drive a light motor vehicle. The contention of the insurance company is that it is not a valid tourist licence and it does not have a

badge endorsement by the transport authority. The Hon'ble Supreme Court, in the judgment in Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668, has held that once a person is authorised to drive a light motor vehicle, he is entitled to drive any vehicle in that class/category, be it a private or transport or goods vehicle. As long as it falls under the class of light motor vehicle, it cannot be said that he is not entitled to drive and, on that ground, compensation cannot be denied. Therefore, all the questions of law raised by the insurance company are answered in the affirmative and against the appellant.

6. Civil Miscellaneous Appeal is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dixit
To
Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Coimbatore.

Copy to:The Section Officer,
VR Section, High court, Madras
+1cc to Mr.S.Arunkumar, Advocate SR.No.18921
+1cc to Mr.S.P.Yuvaraj, Advocate Sr.No.18544

VGII(CO)
sm:23.4.2018