

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.198 OF 2006
AND CMP NO.638 OF 2006

Oriental Insurance Company Ltd,
MTPC Office,
8, Esplanade,
Chennai 600 108.

... Appellant/2nd Respondent

Versus

1. T.Ekambaram
 2. E.Papammal
 3. P.Babu
- ...1 & 2 Respondents/Claimants
... 3rd Respondent/1st Respondent

PRAYER: Appeal filed under Section 30 of the Workmen's Compensation Act 1923 against the order dated 05.10.2005, received on 20.10.2005, passed in W.C.No.338 of 2004 on the file of the Commissioner for Workmen's Compensation - II, Chennai - 6 (Before the Deputy Commissioner of Labour - II, Chennai).

For Appellant : Mr.M.Sivakumar

J U D G M E N T

Aggrieved over the award passed by the Deputy Commissioner of Labour II for Workmen's Compensation, Chennai in W.C.No.338 of 2004 dated 05.10.2005, the Insurance Company has preferred this appeal.

2. According to the respondents 1 and 2 / claimants, their son has employed as driver under the third respondent herein for two years. He was paid a sum of Rs.250/- per day as wages and he was 22 years of age at the time of accident. On 11.07.2004, while he was driving lorry belonging to the third respondent bearing registration number TN01-F8589, he met with an accident and died on the spot. Since the accident occurred during and arising out of employment, they laid a claim petition.

3. The lorry was insured by the appellant herein. The appellant Insurance Company filed counter statement stating that the driver was not holding any valid license at the time of accident and therefore, they are not liable to pay the compensation.

4. In order to prove their case, the respondents 1 and 2/claimants have examined the second respondent as P.W.1 and six documents were marked as exhibits. On the side of the appellant, no witnesses were examined and no documents were marked.

5. The owner of the vehicle, the third respondent herein, remained as exparte. The Tribunal has awarded a sum of Rs.4,27,862/- towards compensation and directed the appellant insurance company to pay the same along with interest at the rate of 12% per annum.

6. The appellant Insurance Company filed the above appeal on the following questions of law:

" 1.Whether the learned Deputy Commissioner is correct in coming to the conclusion that the appellant is liable to pay the entire compensation amount to the respondents 1 and 2 herein when the deceased driver was not having necessary license to drive the lorry ?

2.Whether the learned Deputy Commissioner is correct in directing the appellant to pay the compensation amount to the respondents 1 and 2 herein when the third respondent violated the terms and conditions of the policy in allowing the deceased who was not having necessary license to drove the lorry?

3.Whether the learned Deputy Commissioner is correct in coming to the conclusion that the death of the deceased was during the course of his employment without any documentary evidence?"

7. The learned counsel for the appellant would vehemently contend that the claimants have drastically failed to prove that the deceased was holding a valid license at the time of accident and therefore they are not liable to pay the compensation.

8. As seen from the records, the first defendant/third respondent herein, owner of the vehicle, remained as exparte. He is the first person to speak about the employment of the deceased and the driving license which he

hold during his employment. In the absence of any evidence to the contrary by the employer, it is presumed that the employee held a valid driving license, while driving the lorry. In so far as the accident and the death of the deceased workmen is not disputed, the insurance company is liable to examine the witnesses and prove that the deceased was not holding any license at the time of accident. In the absence of any proof, the Substantial Questions of Law raised by the insurance company in this appeal cannot be sustained. On the other hand, the claimants have proved their case by cogent evidence. In such circumstances, I do not find any merit in the appeal.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

asi/bkn

To

1.The Commissioner for Workmen's Compensation - II,
Chennai - 6.

2.The Deputy Commissioner of Labour II, Chennai

+lcc to Mr.R.Sivakumar, Advocate SR.NO.8268

CA(CO)
sm:24.10.2018

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