

IN THE HIGH COURT OF JUDICATUE AT MADRAS

Reserved on: 23.04.2018	Delivered on: 19.09.2018
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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.3631 of 2013
and
M.P.No.1 of 2013

M/s.Bharti Axa General Insurance Co.Ltd.,
Salem-16. .. Appellant/ II Opposite Party

/Vs/

1. Dastageer .. Applicant/ II Opposite Party
2. Saithanibee
3. E.Sekar ..II Opposite Party/III opposite Party

Civil Miscellaneous Appeal filed under Section 30 of Employees Compensation Act, 1923, against the Judgment and Decree dated 21.07.2013 passed in W.C.No.8 of 2012 by the Deputy Commissioner of Labour, Salem.

For Appellant : Mrs.R.Rathna Thara

For Respondents: Mr.S.KalyanaRaman for R1 and R2

R-3 Exparte in Lower Court

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 21.07.2013 passed in W.C.No.8 of 2012 by the Deputy Commissioner of Labour, Salem. W.C.No.8 of 2012 was filed by the Claimants for the death of one Syed whose parents are the claimants.

2. The first respondent is the employer of the deceased Syed and the deceased was working as a driver under the first respondent. The vehicle ie., Tata Ace bearing Regn.No.TN-30-BY-7026 was insured with the second respondent. On the date of occurrence ie., 05.03.2011 at 10 p.m, the deceased was under the employment of first respondent by taking the goods in the mini auto. While he was proceeding on the Salem-Bhavani Main Road,

the said auto was hit the Tarus lorry bearing Regn.No.TN-20-4599, due to which, the deceased Syed sustained severe injuries and he died on the spot. The petitioners being the parents of the deceased Syed, filed this claim application.

3. It is the case of the claimants that at the time of accident, the deceased was 20 years old and he was earning Rs.5000/-per month. Hence the claimants being the parents of the deceased,claimed a compensation for a sum of Rs.10,00,000/-.

4. On the side of the petitioners, the first petitioner examined himself as P.W.1 and Exs.P.1 to P.12 were marked. On the side of the respondent, two witnesses were examined and Exs.R.1 to R3 were marked. In Ex.P.2 Post Mortem Certificate, it is stated that "the deceased would appear to have died of respiratory failure due to haemorrhage. The issue raised before the Deputy Commissioner of Labour, Salem is as to whether the vehicle driven by the deceased was a light motor vehicle or goods vehicle?

5. It is also observed before the Deputy Commissioner of Labour, Salem that in the policy, the vehicle insured has been stated as light vehicle. Further, the deceased was also possessing the driving licence for driving the light motor vehicle. It is argued by the respondent/insurance company that for driving the goods vehicle, the deceased was not having Badge Number and transport vehicle endorsement. Hence, the Deputy Commissioner of Labour, Salem accepted the argument of the petitioner that the vehicle driven by the deceased was one mini auto. He died during his employment under the first respondent. Hence, the Deputy Commissioner of Labour, Salem. has fixed the income at Rs.5,966/- per month. By applying the multiplier, compensation has been calculated at Rs.6,76,831/-. Further, the Tribunal has given a finding that since at the time of accident, the deceased was having only the driving licence and on that date, for driving a transport vehicle no licence was obtained and badge number not provided. Since, the first respondent knowing fully well that the deceased was not possessing the driving licence for driving the transport vehicle and there was also no badge number was given to the deceased, he permitted him to drive the transport vehicle, which is contrary to the terms and conditions of the policy.

6. Based on the arguments advanced by the petitioner and respondent and in view of the decisions rendered in 2008 (3) TAC 20 (SC) and 2009 (2) TAC (4) (SC), wherein, the Hon'ble Supreme Court, while exercising jurisdiction under Article 142 of the Constitution, the Tribunal directed the insurance company to satisfy the award in favour of the claimants and recover the same from the owner. Aggrieved against the said Order, the Insurance Company has preferred this appeal.

7. In the appeal also, it is argued by the respondents that based on the definition of "light motor vehicle" and "transport vehicle", that-

"No separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2) (d) continues to be valid after Amendment Act 54 of 1994 and 28.03.2001 in the form"

Hence in the light of the above arguments advanced by both parties, the Insurance Company is directed to deposit the amount, however, the insurance company is entitled to recover the same from the owner of the vehicle.

8. In the result, this Civil Miscellaneous Appeal is disposed of. No costs. The award passed by the Deputy Commissioner of Labour, Salem in W.C.No.8 of 2012 dated 21.07.2013 is hereby confirmed, regarding quantum of compensation aspect only. The appellant/Insurance company is directed to pay the entire award amount of Rs.6,76,831/- less the amount, if any, already deposited, along with interest at 12% from the date of petition till the date of deposit to the credit of W.C.No.8 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. Then the appellant/insurance Company is directed to recover the said award amount from the owner of the vehicle by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in 2004 (2) CTC 464 (Oriental Insurance Co. Ltd., -vs- Shri Nanjappan and others. On such deposit being made, the Deputy Commissioner of Labour, Salem is directed to transfer the amount directly to the bank account of the claimants as per the ratio of apportionment ordered by Deputy Commissioner of Labour, Salem through RTGS, within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv

To

1.The Deputy Commissioner of Labour,
Salem

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

+1cc to Mr.R.Rathna Thara, Advocate, S.R.No.64911

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.64770

C.M.A.No.3631 of 2013

AD(CO)

rrs 28/11/2018



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