

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3678 OF 2012

Divisional Manager,
Oriental Insurance Company Ltd.,
First Floor, No.1, Katpadi Road,
Vellore-4.

.... Appellant/2nd opposit party

-vs-

1.V.T.Govindan
2.Vichitra (Minor)
(minor rep by her father and
Natural Guardian V.T.GOVINDAN,)
3.L.Sethuraman ... Respondents/Appellant 1 & 2

Appeal against the order, dated 20.08.2012, passed in
W.C.No.247 of 2007, on the file of Commissioner for Workmen's
Compensation-1 (Deputy Commissioner of Labour-1) Teynampet,
Chennai.

For appellant : Mr.R.Sivakumar

JUDGMENT

Challenging the award of compensation passed in
W.C.No.247 of 2007 on the file of Commissioner for Workmen's
Compensation-1 (Deputy Commissioner of Labour-1), Chennai, dated
20.08.2012, the insurance company has preferred this appeal.

2. The deceased employee was the cleaner in a lorry
bearing registration No.KA-01-A-4689. While he was on duty, the
lorry was stopped, for taking food. The driver instructed the
deceased cleaner to suck some diesel from the diesel tank.
While he was carrying out his task on the instruction of the
driver, diesel went into his respiratory tract. The deceased was
taken to hospital, where he died. The authority under the
Workmen's Compensation Act has held that the accident has taken
place during the course of employment and awarded the
compensation, fixing the liability on the appellant-insurance
company.

3. This appeal has been preferred on the following substantial questions of law :

(1) Whether the learned Deputy Commissioner is correct in coming to the conclusion that the deceased died during the course of his employment when the lorry bearing Registration No.KA-01-A-4689 was not at all involved in any accident ?

(2) Whether the learned Deputy Commissioner is correct in coming to the conclusion that dying while drawing diesel from the lorry diesel tank amounts to an accident arising out of and in the course of employment ?

(3) Whether the learned Deputy Commissioner is correct in coming to the conclusion that the deceased died due to unexpected accident during the course of his employment as a cleaner in the lorry when there was no casual connection between the death of the deceased and his employment ?

(4) Whether the learned Deputy Commissioner is correct in awarding interest at the rate of 12% per annum from the date of accident, if the insurance company/appellant is not depositing the compensation amount within 30 days from the date of receipt of the order copy ?

4. According to the learned counsel for the appellant-insurance company, it is not the duty of the cleaner to suck diesel from the diesel tank and, therefore, it cannot be construed that the accident was one arising out of employment. He relied on a judgment of the Hon'ble Supreme Court in *Malikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Company Ltd. and Another*, 2009 (1) TN MAC 346 (SC), wherein, the Hon'ble Supreme Court, relying on Section 3 of the Workmen's Compensation Act, 1923, held that the incident should have some casual connection with the nature of employment. If the workman dies natural death because of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed on the employer. However, when the death was due not only to the disease but also the disease coupled with the employment, then, it can be said that death arose out of employment and employer would be liable.

5. In the instant case, the narration of facts would go to show that the deceased cleaner was carrying out the instructions of the driver to suck diesel from the diesel tank. There is no doubt that the incident had taken place during the course of employment, as the driver and the cleaner were taking the vehicle to a particular destination, when the accident took place. Whether it arises out of employment is the only question. It is the duty of the cleaner to assist the driver and carry out his instructions. In such a circumstance, the cleaner, sucking diesel as per the instructions of the driver during the course of employment, should also be construed as an act, which arises

out of employment. The case relied on by the learned counsel for the appellant in *Malikarjuna G. Hiremath*, cited above, is not applicable to the case on hand. It is the clear case that the accident that had taken place was arising out of employment and during the course of employment. In such circumstances, I do not find any infirmity in the finding arrived at by the authority under the Workmen's Compensation Act. As per Section 4-A of the Act, the claimant is entitled to get interest after a lapse of 30 days from the date of accident. The interest is payable from 31st day, as affirmed by the judgment of the Hon'ble Supreme Court in *Pratap Narain Singh Deo v. Shrinivas Sabata and another*, 1976 (1) SCC 289, which is subsequently followed by a Division Bench of this Court in a batch of cases in C.M.A.No.823 of 2001 (*N.Ganesan v. Thilagavathi and another*) reported in 2010 (2) TN MAC 80 (DB). In view of the conclusion arrived at by this Court, the questions of law raised by the appellant are answered against the appellant and I hold that the insurance company is liable to pay compensation on behalf of the insured employer.

6. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant-insurance company is directed to deposit the award of compensation along with interest at 12% per annum from 31st day of the accident till the date of deposit within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dixit

To

Commissioner for Workmen's Compensation-1
(Deputy Commissioner of Labour-1),
Teynampet,
Chennai.

+1cc to Mr.R.SIVAKUMAR, Advocate, S.R.No. 18011

C.M.A.No.3678 OF 2012

NM(CO)
TR(17/04/2018)