

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.3391 OF 2006

National Insurance Company Ltd.,
62-A, Jawaharlal Nehru Veethi,
Pondicherry.

... Appellant

Vs.

1.Thiru.Ramados
2.Tmt.Sulochana
3.Selvi Janathar
4.Tmt.T.Umayal

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award dated 06.10.2006 made in W.C.No.146/2005 on the file of the Commissioner for Workmen's Compensation Court - 2 / Deputy Commissioner of Labour - 2, D.M.S. Compound, Chennai - 6.

For Appellant : Mr.S.Vadivel

For Respondents
1 to 3 : Mr.T.Dhanyakumar

For Respondent 4 : Mr.T.Sezhian

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed by the Deputy Commissioner of Labour - II, Chennai, in W.C.No.146 of 2005 dated 06.10.2006. By the award, the Deputy Commissioner of Labour-II, Chennai, awarded compensation to the claimants for the death of the driver of the vehicle.

2. The case of the claimants / respondents 1 to 3 herein is that the deceased was working as a Driver under the fourth respondent herein. While he was driving the lorry bearing Registration No.PY-01-S-9159 on 03.06.2013, at about 01.00 a.m., he stopped it for attending his nature's call. Since he did not return to the vehicle even after one hour, the cleaner of the lorry along with another driver searched for him and found the

body of the deceased. A claim was made on the ground that the death had happened during the course of employment and arising out of employment. The factum of the death during the course of employment and arising the course of employment was disputed by the respondents therein. The owner of the vehicle contended that the deceased suffered unnatural death neither out of his employment nor during the course of his employment, but while he was indulging in an illicit act, violating his duty and the instructions given by the employer. Since the deceased was misbehaving with women, he was got killed and therefore, the owner of the vehicle is not liable to compensate the deceased for the wrong act. The insurance company also has objected the claim that the incident had taken place during the course of employment. The Deputy Commissioner of Labour found that the accident had taken place while the driver was on duty and therefore, it should be construed as it had happened during the course of employment and arising out of employment and awarded compensation. Challenging the award, the insurance company is before this Court.

3. The very short point involved in this case is as to whether the incident which is alleged can be called as accident and as to whether the employer is liable to compensate the worker, who indulged in a prohibited illegal conduct and also as to whether the illegal act would fall within the ambit of "during the course of employment" and "arising out of employment". The First Information Report marked as Ex.A1 would reveal that the deceased had gone to the whorehouse to have sexual intercourse with fifth and sixth accused namely Pappathi and others. On his return, accused nos.1 to 4, with an intention to rob the Driver, had assaulted him and in that incident, the driver got killed. The statement made in the First Information Report is not a conclusive one, but however, R.W.1 would clearly depose that the deceased had gone for the purpose of having illegal sexual intercourse with a woman and had not come back even after one hour. On search made by the cleaner of the vehicle along with another Driver, it was found that the deceased got killed and the body was lying in fields. He would further state that the deceased Driver has violated the instructions given by the employer and indulged in some illegal activity which will not fall within the definition of arising out of employment and during the course of employment. Therefore, the claim cannot be granted. It is further proved that the deceased was killed in a far off place, which is not nearer the Lorry and which has no connection to his employment and therefore, the employer is not liable to pay compensation.

4. This Court in ORIENTAL INSURANCE COMPANY LTD., VS. D.SAKUNTHALA AND OTHERS [CDJ 2006 MHC 869] granted compensation to a Driver, who was murdered during the course of employment.

The question that the murder of the workman amounts to an accident arising out of and in the course of employment and the claimants are entitled to get compensation. In that case, the Driver was kidnapped by un-known persons and got killed, while he was on duty. Therefore, this Court has held that the Driver was entitled to compensation.

5. However, the present case on hand is slightly different. It is not that the Driver was killed in an attempt to extract money from him. The First Information Report as well as the evidence of the witnesses would go to show that the Driver had gone to a secluded place for having sexual intercourse with two women. While he was coming back from the place, he was attacked by certain unscrupulous elements for the purpose of robbing his money and materials. The contention of the claimants that the Driver went to attend nature's call does not appear to be correct, but on the other hand, the involvement of the Driver in an un-lawful act, which has no connection with his employment, will not fall within the definition arising out of and during the course of employment. Further, the indulgence of the illegal act shall be construed as violation of the directions issued by the employer. In such circumstances, the death caused to the Driver cannot be construed as one arising out of employment entitling him to get compensation and on the other hand, it is construed as an illegal act. In such circumstances, the claimants are not entitled to get compensation for the same.

6. In fine, the award of compensation made by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour - II, Chennai, dated 06.10.2006 in W.C.No.146 of 2005 is set aside and the Civil Miscellaneous Appeal is allowed. No costs.

7. The learned counsel appearing for the appellant would submit that they have already deposited the compensation before the Workmen's Compensation and Deputy Commissioner of Labour - II, Chennai, the authority under the Workmen's Compensation Act. Therefore, the Deputy Commissioner of Labour - II, Chennai is directed to refund the compensation with accrued interest to the appellant / insurance company.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TK
To

The Commissioner for Workmen's Compensation Court - 2
and Deputy Commissioner of Labour - 2
D.M.S. Compound,
Chennai - 600 006.

+lcc to Mr.S.Vadivel, Advocate Sr.41761
+lcc to Mr.R.Subramanian, Advocate Sr.42100
+lcc to Mr.T.Dhanyakumar, Advocate Sr.42457

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