

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.383 of 2003 and  
C.M.P.Nos.3262 & 6385 of 2003

United India Insurance Company Ltd.,  
38, Anna Salai, Chennai - 600 002.  
... Appellant/2nd Respondent

Vs.

1. K. Anjalai ...1st & 2nd Respondents/  
Petitioners
2. K. Kuppusamay
3. Pappu Finance Limited,  
No.68, G.N.Chetty Road,  
T.Nagar, Chennai - 600 017.  
...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 12.08.2002 passed in W.C.No.85 of 2000 by the Commissioner for Workmen's Compensation - I, Chennai - 600 006.

For Appellants : M/s.D.Bhaskaran

For 1& 2 Respondent: Mr.S.Alex Raj for  
A.Shanmugaraj

J U D G M E N T

Challenging the liability to pay the compensation, the Insurance Company has come up before this Court with this Civil Miscellaneous Appeal.

2. The case of the claimants is that their son was working as a Driver under the 1<sup>st</sup> respondent. Since his employer was supposed to go to Pondicherry in the early morning on 20.04.1997, he instructed the deceased to go over to his work place on 19.04.1997 itself. Accordingly, the deceased has gone

for duty and when he went out for the purpose of purchasing brake oil for the vehicle bearing Registration No.TN-09-F-9685, he met with an accident and died due to the injuries. The claimants laid a claim petition on the death of their son.

3. The Insurance Company denied the claim on all aspects and the 1<sup>st</sup> respondent/employer remained ex-parte.

4. To prove his claim, the 2<sup>nd</sup> claimant had let in evidence as A.W.1. and marked documents as Exs.A1 to A7. On the side of the respondents, no evidence was let in and no documents were marked.

5. The Tribunal, considering the oral and documentary evidence, has held that the accident had taken place during the course of employment and awarded the compensation. Since the vehicle is covered by the Insurance Policy, the liability to pay the compensation was fixed on the Insurance Company. The liability is challenged by the Insurance Company in the present appeal.

6. According to the learned counsel for the Insurance Company, the accident had not taken place during the course of employment, much less, it does not arise out of the employment. The deceased was riding a two wheeler bearing Registration No.TN-09-E-7537 and met with an accident due to rash and negligent driving and not vehicle insured by appellant viz. No.TN-09-F-9685. The 1<sup>st</sup> respondent/employer has also filed a counter to the effect that the death suffered by the deceased due to his negligence. There is no proof of casual connection with respect to the employment as a Driver and the accident. Further, it was contended that the insured vehicle was not involved in the accident and hence it cannot be said that the accident had taken place during the course of employment making it liable to pay compensation.

7. I have given my careful consideration to the arguments advanced by the learned counsel appearing for the appellant.

8. The 2<sup>nd</sup> claimant, in his evidence, has cogently stated that his son has gone for duty on 19.04.1997 itself. Further, his employment and continuance with the employer was proved by Ex.P4, reply notice sent by the employer. In the reply notice, the employer has categorically admitted that the deceased had reported for duty on 19.04.1997 and he was in employment on 20.04.1997. Therefore, it is clear that the accident had taken place during the course of employment.

9. The factum that the deceased had gone to purchase the brake oil was not at all disputed by any of the parties. In Ex.A3, lawyer's notice, there is a clear averment made that the

deceased during the course of employment has gone to purchase the brake oil. Therefore, the act done by the deceased has casual connection to the duty performed as a Driver.

10. The learned counsel would rely on the judgment of this Court reported in 2002 ACJ 378 (New India Assurance Co.Ltd. V. A.Sharifa Bivi and others), wherein, it has been held as under:-

9.... it is clear that the deceased died only while he was performing the duties as an employee and not as a driver. The accident happened only while he was discharging some other functions, no doubt, on the instructions of his employer. In such a case, there can be no liability on the insurance company even though, the employee is entitled to maintain his claim as against his employer.

11. In that case, the facts are different. The employer had given instructions to his driver to go and collect the rental arrears. The employee proceeded to do that work as instructed by his employer. It is obvious that collecting rent from the tenants is not a duty of the driver. In such cases, only because he was employed as a driver, the Insurance Company is not liable to pay compensation for the works, which are not connected to his employment.

12. But, in the instant case, the driver was in his work place on duty and during the course of his employment, he went to purchase the brake oil, which has connection with his duty. Therefore, the judgment relied on by the learned counsel for the Insurance Company reported in 2002 ACJ 378 (New India Assurance Co.Ltd. V. A.Sharifa Bivi and others), cited supra, is not applicable to the case on hand.

13. The learned counsel for the appellant relied on yet another judgment reported in 2017 (2) TN MAC 641 (SC) (Daya Kishan Joshi and ors. Vs. Dynemech Systems Pvt. Ltd.), wherein, the Hon'ble Supreme Court has held that the expression 'out of employment' is not confined to the mere nature of the employment: the expression applies to employment as such to its nature, its conditions, its obligations and its incidents. The words "arising out of employment" are understood to mean that during the course of employment, the injury has resulted from some risk incidental to the duties. Unless engaged in the duty owed to the Employer, it is reasonable to believe that the Workman would not otherwise have suffered. Therefore, he would contend that the accident is not incidental to the duty and therefore, the Insurance Company is not liable to pay compensation.

14. But, in the instant case, the duty performed by the deceased was in connection with his duty as a driver. The High Court of Kerala in the case of Oriental Insurance Co.Ltd. V. Thankappan and others reported in 2006 ACJ 554 has dealt with similar circumstances, wherein, the conductor slipped in the steam resulting in his death while they had been with the bus at night for the purpose of commencing duty early next morning. The High Court of Kerala has held that the accident arose out of employment and the Insurance Company is liable to pay compensation. The relevant paragraph of the judgment reads as under:-

8. Similarly in this case also as the workman was expected to be in the bus for the purpose of commencing his duty in the early morning at 3.30 a.m. He had to attend to his human needs before commencing duty as he was staying in the bus. There was no arrangement made for that purpose. He had to go to the nearby stream for taking bath. It was at that time there occurred the accident resulting loss of life of the workman. Necessarily, it shall be taken one arising in any way out of his employment as held by Supreme Court in Francis De Costa's case, 1996 (2) KLT 799. Necessarily, it cannot be stated that the death had not arisen out of and in the course of employment. The question of law raised is thus answered in negative against the appellant.

15. I would follow the decision rendered by the High Court of Kerala in Oriental Insurance Co.Ltd. V. Thankappan and others as it is applicable to the facts of the case on hand. In the instant case, it is clearly proved by evidence that the deceased had gone to duty on the previous night itself. His presence, employment, and accident on 20.04.1997 was proved by way of Ex.A4. The purpose of his riding a two wheeler was to purchase the brake oil, which is amply proved by Ex.A3. A.W.1, the 2<sup>nd</sup> claimant, has also spoken to that effect. These oral and documentary evidences were not controverted by the respondent. Therefore, the Tribunal had come to the conclusion that the said accident had taken place during the course of employment and it was arose within the employment.

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16. Therefore, I do not find any infirmity in the order passed by the Commissioner for Workmen's Compensation - I, Chennai, in W.C.No.85 of 2000, dated 12.08.2002, and it is very much reasonable and legal. In such circumstances, this Civil Miscellaneous Appeal merits no consideration and accordingly, it is dismissed.No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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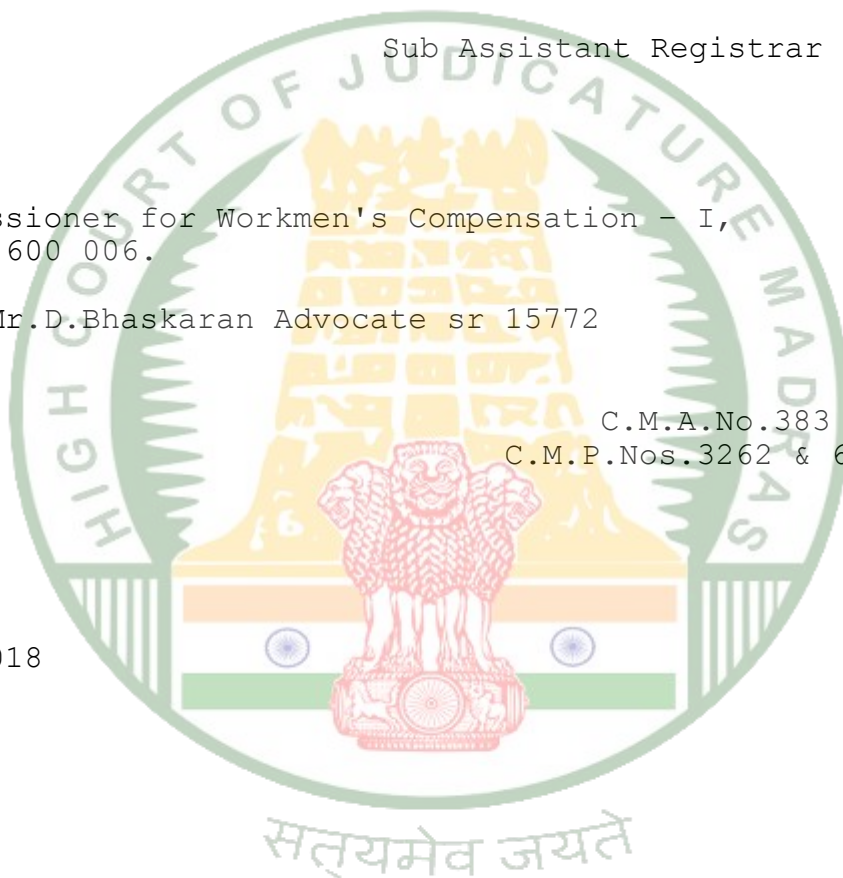
To

The Commissioner for Workmen's Compensation - I,  
Chennai - 600 006.

+1 cc to Mr.D.Bhaskaran Advocate sr 15772

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