



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) .No.333 of 2014

and

M.P. (MD) .No.1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
No.8/41, Mangalam Building,
Omalur Main Road,
Four Road,
Salem- 636 009.

Rep. by its Branch Manager

... Appellant/2nd Respondent

Vs.

1.Santhosam

2.Minor. Pandi Durai ... Respondents 1 & 2/Petitioners 1 & 2
(Minor rep. by 1st respondent)

3. Arumugam

4.Papathi ... Respondents 3 &4/ Petitioners 3 & 4

5.P.Mani ... 5th Respondent/1st Respondent

PRAYER:- Appeal filed under Section 30 of Workmen Compensation Act, 1923, against the order dated 06.11.2012, made in W.C.No.74 of 2011, on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Trichy.

For Appellant : Mr.M.E.Ilango

For Respondents 1 and 2 : Mr.J.Anand Kumar

For Respondents 3 to 5 : No appearance

JUDGMENT

This civil miscellaneous appeal has been filed challenging the award passed by the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Trichy in W.C.No.74 of 2011, dated 06.11.2012.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2 and perused the records carefully.



3. It is a case of fatal. The husband of the first respondent was working as a driver of the Borewell Lorry, which was owned by the 5th respondent. While the deceased was driving the Lorry to Madhya Pradesh in the course of his employment, he died due to heart attack. The Deputy Commissioner of Labour, after considering the oral and documentary evidence, has awarded a sum of Rs.4,03,800/- as compensation, to be paid by the appellant/Insurance Company. Aggrieved over the same, the appellant/insurance company is before this Court.

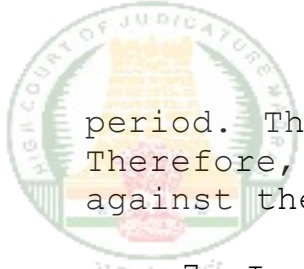
4. At the time of admission the following substantial questions of law were framed for consideration:

"a) Whether Heart Attack suffered by the workmen could be termed as personal injury caused by an accident arising out of and in the course of employment?

b) Whether the Lower Authority was justified in determining the salary of the respondent notionally without any materials to substantiate the same?."

5. Insofar as the first substantial question of law is concerned, the same is no more res integra, in view of the decisions of the Hon'ble Supreme Court in the case of National Insurance Co., Ltd., vs. Shaeja and others, reported in 2012 ACJ 1579 and in the case of Param Pal Singh vs. National Insurance Co., Ltd., and another reported in 2013 ACJ 526, wherein the High Court and the Hon'ble Supreme Court has categorically held that the very job of driving particularly, bearing in mind the time schedules which are imposed on them make stress unavoidable and therefore, it cannot be held that the death of the driver due to Heart Attack was not arisen out of employment. Here, in this case, according to the claimants, the deceased died due to continuous work stress and strain. The Deputy Commissioner of Labour has rightly held that though no injury has been caused to the deceased, the death was due to his employment. This Court does not find any reason to interfere with the said finding. Thus, the first substantial question of law is answered against the appellant.

6. As far as the second question of law is concerned, according to the learned counsel for the appellant, the Tribunal erred in notionally determining the salary of the deceased as Rs.4000/- per month. But, according to the claimants, at the time of death, the age of the deceased was 35 years and he earned Rs.10,000/- as monthly salary. But, since no documents have been filed to substantiate the same, the Tribunal has taken Rs.3,466/- as per the minimum wages fixed by the Government under the Minimum Wages Act. Thus, the Deputy Commissioner has fixed only minimum wage fixed during the relevant



period. This Court does not find any reason to reduce the same. Therefore, the second substantial question of law is also answered against the appellant.

7. In the result, this civil miscellaneous appeal is liable to be dismissed and the same is accordingly dismissed. The award passed by the learned Commissioner in W.C.No.74 of 2011 dated 06.11.2012 stands confirmed. The claimants are entitled to withdraw the entire award amount, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour),
Trichy.

copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies).

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SDS/SKN:RSK/SAR-4/05.06.2018/3P/4C