



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.09.2018
CORAM :
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

CMA(MD)No.427 of 2014
and
M.P(MD)No.2 of 2014

The Oriental Insurance Company Limited,
Divisional Office - 8,
Shree Pankaj Complex,
Perambur Barracks Road,
Purasawalkkam,
Chennai - 7.

... Appellant/2nd Respondent

vs.

1.Tmt.Anithakumari
2.Minor Muthumari
3.Minor Muneeswari
4.Minor Selvalakshmi ...1 to 4 Respondents/1 to 4 Petitioners
[The minors/respondents 2 to 4
Rep. by their mother and next
friend 1st respondent Tmt.Anithakumari]

5.M/s.East Coast Constructions &
Industries Ltd.,
Bhukaria Building,
No.4, Moores Road,
Chennai - 6.

...5th Respondent/1st Respondent

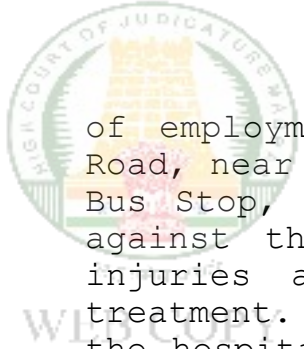
Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the award dated 30.03.2012, made in W.C.No.68 of 2008, on the file of the Commissioner for Workmen's Compensation [Deputy Commissioner of Labour], Tirunelveli.

For Appellant : Mr.K.Bhaskaran
For R1 to R4 : Mr.G.Thalaimutharasu
For R5 : Mr.SP.Karthik

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed in W.C.No.68 of 2008, dated 30.03.2012, on the file of the Deputy Commissioner for Workmen's Compensation, Tirunelveli.

2.The appellant is the second respondent in W.C.No.68 of 2008. The respondents 1 to 4 herein have filed the above W.C. contending that on 29.01.2008 at 10.00 hours, one Subramanian, the husband of the first respondent and father of the respondents 2 to 4 was working as a Labourer under the fifth respondent. During the course



of employment, while the deceased was walking in South Bye-pass Road, near Railway Over Bridge, to change the scar valve in the BSNL Bus Stop, a Motorcycle bearing Registration No.TN-67-S-8914 dashed against the deceased, in which, the deceased sustained grievous injuries all over the body and was taken to a hospital for treatment. Despite intensive treatment, he died on 04.02.2008 in the hospital. The respondents 1 to 4, who are the legal heirs and dependants of the deceased, claimed compensation of Rs.3,94,120/-.

3.The appellant Insurance Company/Insurer of the fifth respondent/employer filed counter contending that the deceased did not die during and in the course of employment under the fifth respondent.

4.The Deputy Commissioner of Labour, Tirunelveli, considering the pleadings and evidence adduced on either side, held that the deceased died during and in the course of employment under the fifth respondent and awarded compensation of Rs.3,31,730/-.

5.Aggrieved by the same, the Insurance Company has filed this appeal.

6.This Court, by order dated 22.04.2014, admitted the Civil Miscellaneous Appeal on the following substantial questions of law:-

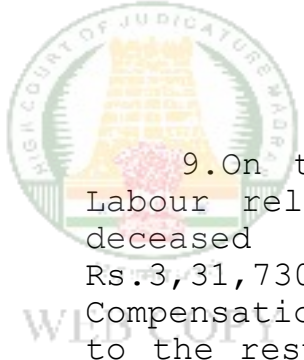
'1.Whether the Award of Rs.3,31,730/- fixed by the learned Commissioner for Workmen's compensation is just and proper and not exaggerated?

2.Whether the deceased was a ''Workman'' and the accident in question has ''arisen in the course of employment'' under the provision of Workmen's Compensation Act?

3.Whether in this case a jurisdictional question will involve a substantial question of law and a finding of fact arrived at without there being any evidence would also give rise to a substantial question of law?''

7.I have heard the learned counsel appearing for the parties and perused the materials available on record.

8.Though the learned counsel for the appellant made submissions contending that at the time of accident, the deceased was not working under the fifth respondent/employer, it is seen from the records that during his examination, the fifth respondent himself has categorically admitted that the deceased died during and in the course of employment under him. Therefore, the contention of the appellant that the deceased was not working under the fifth respondent was repelled by the Deputy Commissioner of Labour. Hence, the finding of the Deputy Commissioner of Labour that the deceased died during and in the course of employment under the fifth respondent cannot be said to be perverse warranting interference by this Court.



9. On the quantum of compensation, the Deputy Commissioner of Labour relying upon Ex.R.1, has fixed the monthly income of the deceased at Rs.3,500/- and computed the compensation at Rs.3,31,730/- as per the formula provided under the Workmen's Compensation Act and directed the appellant to pay the said amount to the respondents 1 to 4/claimants, which is just and reasonable. Therefore, this Court is not inclined to interfere with the award of the Deputy Commissioner of Labour. Accordingly, the substantial questions of law are answered against the appellant.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Commissioner for Workmen's Compensation,
Tirunelveli. (Deputy Commissioner of Labour)

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

+1CC to Mr.K.Bhaskaran, Advocate, SR.No.85695

+1CC to Mr.G.Thalaimutharasu, Advocate, SR.No.86202

+1CC to Mr.R.Karunanithi, Advocate, SR.No.86031

CMA (MD) No.427 of 2014
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SMN2

ES/SKN/RSK/SAR 3/14.11.2018/3P/7C