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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.265 of 2018

and

C.M.A(MD)No.722 of 2017

and

C.M.P(MD)No.7624 of 2017

C.M.A(MD)No.265 of 2018

- 1.Tmt.E.Nirmala Devi
- 2.Minor Akila
- 3.Minor Anitha
- 4.Minor Sowmiya
- 5.Minor Brinda
- 6.Tmt.Ariyathal
- 7.Muthusamy

(Minors Appellants 2 to 5 are represented by
their Natural Guardian and Mother,
1st Appellant)

..Appellants/Petitioners

vs.

- 1.K.Sivasami
- 2.The Branch Manager,
Reliance General Insurance Company Ltd.,
15-A, Thillai Nagar Main Road,
11th Corss Street, 2nd Floor,
PLA Kanagu Towers,
Trichy.

.. Respondents/Respondents

Prayer: The appeal filed under Section 30(1) of the Workmen Compensation Act, to modify the order passed by the Deputy Commissioner of Labour/Workmen Compensation, Trichirappalli made in W.C.No.23 of 2014, dated 30.05.2016 by allowing the Civil Miscellaneous Appeal.

For Appellants : Mr.N.Sudhagar Nagaraj
For R2 : Mr.V.Sakthivel

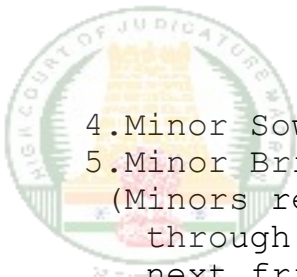
C.M.A(MD)No.722 of 2017

The Branch Manager,
Reliance General Insurance Company Ltd.,
15-A, Thillai Nagar Main Road,
11th Corss Street, 2nd Floor,
PLA Kanagu Towers,
Trichy.

... Appellant/Respondent No.2

vs.

- 1.Tmt.E.Nirmala Devi
- 2.Minor Akila
- 3.Minor Anitha



4.Minor Sowmiya

5.Minor Brinda

(Minors respondents are represented
through their mother, guardian and
next friend the first respondent herein)

6.Tmt.Ariyathal

7.Muthusamy

...Respondents Nos.1 to 7/ Petitioners

8.Mr.K.Sivasamy

...Respondent No.8/ Respondent No.1

Prayer: The appeal filed under Section 30(1) of the Workmen Compensation Act, to set aside the order passed in W.C.No.23 of 2014, on the file of the Deputy Commissioner of Labour [Commissioner for Workmen Compensation], Trichy by allowing the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Sakthivel
For R1 to R7	: Mr.N.Sudhagar Nagaraj
R8	: NA

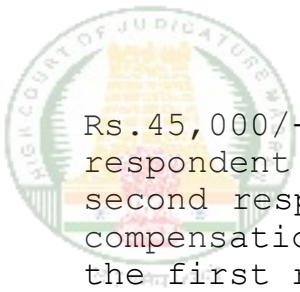
COMMON JUDGMENT

Both the appeals arise out of same order, passed by the Deputy Commissioner of Labour [Commissioner for Workmen Compensation], Trichy, in W.C.No.23 of 2014, dated 30.05.2016 and the parties are referred to as per their rank in the claim petition.

2.The appellants in C.M.A(MD)No.265 of 2018 are the respondents 1 to 7 in C.M.A(MD)No.722 of 2017 and the claimants in the claim petition and the first respondent in C.M.A(MD)No.265 of 2018 is the 8th respondent in C.M.A(MD)No.722 of 2017 and the first respondent in the claim petition and the second respondent in C.M.A(MD)No.265 of 2018 is the appellant in C.M.A(MD)No.722 of 2017 and the second respondent in the claim petition.

3.According to the claimants, the deceased Ilamaran was working as driver in the lorry bearing Registration No.TN-34-K-1018, belonging to the first respondent insured with the second respondent. On 27.10.2013, while the deceased was washing the lorry, he fell unconscious and other driver and godown Manager took him to the hospital and the Doctors declared that the said Ilamaran died. He died during and in the course of the employment under the first respondent. He was aged 48 years and was earning a sum of Rs.25,000/- per month. Therefore, the claimants filed a claim petition against the respondents 1 & 2 claiming a sum of Rs.15,00,000/- as compensation, for the death of one Ilamaran the husband of the first claimant, father of the claimants 2 to 6 and son of the 7th claimant.

4.The first respondent in the counter admitted that the deceased was employed as driver by him. The claimants have to prove that the deceased died in the course of the employment. He has spent



Rs.45,000/- for funeral expenses of the deceased. The first respondent further contended that the vehicle was insured with the second respondent and hence, the second respondent is liable to pay compensation and prayed for dismissal of the claim petition against the first respondent.

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5.The second respondent filed counter statement and denied that the deceased was employed by the first respondent and he died due to workload and stress. In any event, the compensation claimed by the claimants is excessive.

6.The Commissioner considering the pleadings and evidence held that the said Ilamaram was employed by the first respondent and he died due to stress and strain of the work and awarded a sum of Rs.6,20,150/- as compensation directing the second respondent Insurance Company to pay the said amount.

7.Aggrieved by the said award, the second respondent Insurance Company has filed an appeal in C.M.A(MD)No.722 of 2017 and the claimants filed an appeal in C.M.A(MD)No.265 of 2018 for enhancement of compensation.

8.The contention of the learned counsel appearing for the second respondent Insurance Company is that the deceased did not die during and in the course of the employment or due to strain of work. He died due to Heart Attack. The deceased did not die while driving the lorry, during the course of employment. But he died while cleaning the lorry, which is not his work. The Commissioner failed to consider the evidence let in by the second respondent Insurance Company. In support of his case, he relied on the following judgments:-

(i)The Oriental Insurance Co. Ltd., v. Tmt.Chinnapillai & another reported in 2007-4-L.W.355, wherein at paragraph 8, it has been held as follows:-

"8..... Merely on the basis of the pleadings, the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour came to the conclusion that there is a link between the death and the employment. The finding is based on no evidence and there is no material to support such finding. The claimant has failed to establish that there was an injury caused to the workman and such injury was caused by an accident which arose out of and in the course of employment. Merely because, the death has taken place in the course of employment, it will not amount to an accident. There should be positive evidence and material to support that the death was due to an accident arising out of and in the course of employment....."

(ii)Sakina Sheriff v. M.Amsath Begum reported in 2015 ACJ 1226, wherein at paragraph 12, it has been held as follows:-

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12. In the present case, the claim petition does not narrate the nature of employment and the stress and strain



arising during the course of employment, which hastened or contributed to the accident. The claimants have also not let in medical evidence in support of their case. However, the Deputy Commissioner of Labour has allowed the claim petition only on the evidence of P.W.1 and the counter-affidavit filed by the respondent in which the appellant has admitted the employment of the deceased with the appellant. Indisputably, the onus is upon the claimants to establish that it was the work and the resulting strain that contributed to the accident. But there is no proper pleading and evidence adduced by the claimants and there is no material to show that the nature of employment caused stress and strain to the deceased and the accident occurred due to stress and strain. In the light of the principles laid down by the Hon'ble Supreme Court and this Court, in my considered opinion the claimants have not discharged the onus of proof to show that it was the work and the resulting strain which contributed to or aggravated the injury."

(iii)Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali reported in AIR 2007 Supreme Court 248, wherein at paragraphs 24 & 30, it has been held as follows:-

"24.The principles are:

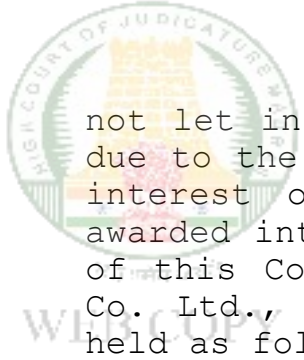
(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3)If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

30.Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor."

9.Per contra, the learned counsel appearing for the claimants contended that the claimants have proved that the deceased died due to stress and strain and during and in the course of his employment under the first respondent while cleaning the lorry. It is an admitted case that deceased was driving the lorry for a long period to deliver the goods. The second respondent Insurance Company has not let in any contra evidence to disprove his contention and did



not let in any acceptable evidence to prove that the deceased died due to the heart attack. The learned Commissioner did not award any interest on the amount awarded. The Commissioner ought to have awarded interest. In support of his case, he relied on the judgment of this Court reported in 2015 (2) TN MAC 772 [Oriental Insurance Co. Ltd., V. S.Neelavathy], wherein at paragraph 15, it has been held as follows:-

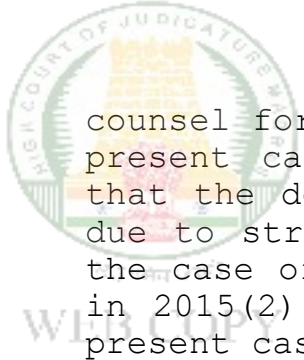
"15..... In the circumstances, the Commissioner for Workmen's Compensation has rightly held that the deceased was driving the Omni-Bus on the early morning of 12.12.2000 and he died during and in the course of employment. P.W.2 who was the alternate Driver at that time who travelled along with the deceased gave evidence that the deceased died while he was driving the Bus. The respondents 4 & 5 did not deny that the deceased was employed by them. The Appellant or the Respondents 4 & 5 have not alleged and proved that the deceased was suffering from any previous ailment and died due to previous illness. Therefore, the finding of the Commissioner for Workmen's Compensation that the deceased died during and in the course of employment is correct and valid."

10.I have heard the learned counsel appearing for the claimants and the second respondent Insurance Company and perused the materials available on record.

11.Though notice was served on the first respondent Mr.K.Sivasami and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

12.It is an admitted fact that the deceased took delivery of Asbestos Sheet from the godown of Ramco situated at Gangaikondan on 27.10.2013 and delivered the same in the Ramco Industries Limited Godown at Kundanoor. This shows that the deceased was driving the lorry continuously from 27.10.2013 till 9.00 a.m., on 28.10.2013. He died on 28.10.2013 at 11.30 a.m., while cleaning the lorry.

13.The contention of the learned counsel appearing for the second respondent Insurance Company that it is not the duty to the driver of the lorry to clean the lorry, is without merit. The deceased was maintaining the lorry by cleaning the same and cannot be found fault for the said work. The Second respondent Insurance Company has not examined a qualified Cardiac Doctor to prove that the deceased died only due to Cardiac arrest and not due to stress or strain. The first respondent admitted that the deceased Ilamaram was working under him as driver. The first respondent has not denied that the deceased has driven the lorry from Gangaikondan to Kundanoor from 27.10.2013 to 28.10.2013. It is also not in dispute that the vehicle was insured with the second respondent Insurance Company. Respondents have not pleaded and proved that deceased was suffering from ailments and died due to previous ailments and not due to stress and strain. The judgments relied on by the learned



counsel for the second respondent are not applicable to the facts of present case as the claimants have proved by acceptable evidence that the deceased died only during and in the course of employment due to stress and strain. In the ratio laid down by this Court in the case of Oriental Insurance Co. Ltd., vs. S.Neelavathy reported in 2015(2) TN MAC 772 is squarely applicable to the facts of the present case.

14. Considering the above facts, I hold that there is no error of law in the finding of the Commissioner, warranting interference by this Court. Accordingly, C.M.A(MD)No.722 of 2017 is dismissed.

15.As far as C.M.A(MD)No.265 of 2018 is concerned, the issues raised in the said appeal is that the Commissioner erred in not awarding interest from the date of accident. The said contention has considerable force.

16.Section 4 of Workmen's Compensation Act, 1923 deals with the compensation payable. As per Section 4(A) of the Act, if the employer disputes his liability to pay the compensation as claimed by the worker or his legal heirs in case of death, he must make provisional payment based on the extent of liability which he accepts. As per Section 4-A(3) of the Act, in case of default, the Commissioner shall order payment of simple interest at the rate of 12% per annum. Payment of interest was considered by this Court as well as the Hon'ble Supreme Court and it has been held that the worker or legal heirs of the deceased are entitled to get 12% interest from the date of accident. The Commissioner has failed to properly consider the Section 4(A) of the Act and erred in awarding interest only from the date of default committed by the second respondent in depositing the compensation as awarded by the Commissioner.

17.In the result, C.M.A(MD)No.265 of 2018 is allowed awarding 12% interest per annum from the date of accident till the date of deposit. The second respondent Insurance Company is directed to deposit the compensation amount with interest and costs to the credit of W.C.No.23 of 2014, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit, the claimants are permitted to withdraw their share as apportioned by the Commissioner. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/



To
The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour), Tiruchirappalli.

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The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. 2COPIES

+2CCs TO MR.V.SAKTHIVEL, ADVOCATE IN SR.NOs.84828,84829.

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and
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