



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).No. 880 of 2011

AND

MP(MD)No.2 of 2011

M/s. United India Insurance Company Limited,
81C, WGC Road,
Thoothukudi.

: Appellant / 2nd respondent

Vs.

1.J.Annapackiam
2.J.Jeyakrishnan
3.J.Gopinath
4.J.Geetha
5.Minor J. Sutha
6.Minor.J.Sugirtha

: Respondents/Petitioners

(Minor respondents 5 and 6 rep.
by their mother / 1st respondent)

7.Hari Gopal(Died)

(R1 to R6 recorded as Lrs of the
deceased R7 vide
order dated 14.07/2014)

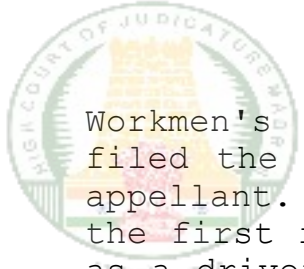
: Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 30.09.2010 passed in W.C.No.59 of 2007, on the file of the Workmen Compensation Commissioner of Labour, Thirunelveli.

For Appellant	: Mr.G. Prabhu Rajadurai
For R1, 5 & 6	: Ms.R. Meenakumari
For R2 & 3	: No appearance
For R4	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order dated 30.09.2010, passed in W.C.No.59 of 2007, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli.



Workmen's Compensation, Thirunelveli. The respondents 1 to 6 filed the above said claim petition against the 7th respondent and appellant. According to the respondents 1 to 6, the husband of the first respondent, father of the respondents 2 to 6 was working as a driver of the 7th respondent and died during and in the course of his employment under 7th respondent. The appellant is the insurer of the vehicle. Hence, they filed the claim petition claiming a sum of Rs.10,00,000/- as compensation, for the death of one Jeganathan.

3. The 7th respondent remained ex parte before the Tribunal.

4. The appellant resisted the claim on the ground that the deceased was son of the 7th respondent and was not an employee of the 7th respondent and at the time of accident, the deceased was not having valid driving licence. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, considering the pleadings, oral and documentary evidence, held that there is no prohibition for the son to work under father and held that the accident occurred during and in the course of employment and the appellant, who is insurer of the vehicle is liable to pay compensation to the respondents 1 to 6. By applying formula, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, awarded a sum of Rs.1,75,440/- as compensation.

5. Against the said order, the appellant / Insurance Company has filed the present appeal.

6. The learned counsel appearing for the appellant relied on the following Judgments and reiterated the averments made in the counter as well as the grounds in the appeal.

(i) 2008(2) TN MAC 572 (National Insurance Company Limited Vs. Nagaraj and others), wherein at paragraphs 13 and 14, it has been held as follows:

" 13. To Sum-up, the first respondent took his wife and daughters and his other family members and friend to Rameswaram as personal trip of pilgrimage and on return he met with an accident. It could not be stated that the accident took place in the course of the employment, nor he was an employee under the second respondent. It is to be observed that there is no evidence to show that the responden is an employee under the second respondent. Ignoring the material facts available in this case, the Workmen Compensation Commissioner has mechanically passed the order by observing that the relationship between the appellant and first respondent is the employee of the second respondent. The said finding is not at all sustainable.



14. In view of the above said discussion, the first respondent could not get the workmen compensation. The observations and findings of the workmen's compensation Commission, need interference of this Court which have to be reversed. The impugned order suffers from infirmity, which is liable to be set aside and accordingly, the same is set aside."

(ii) 2007(1) TN MAC 460 (SC) (Gottumukkala Narasimha Raju and others Vs. National Insurance Company Limited), wherein at paragraphs 24 to 26, it has been held as follows:

" 24. In our considered opinion, it is wholly absurd to suggest that the husband would be a "Workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far - fetched one.

25. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the Tractor joined hands with the claimant for lying a claim only against the insurer. The claim was not bonafide.

26. No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the Claim Petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Sections 143 and 167 of the 1988 Act, the same by itself would not mean that the provisions of the 1988 Act. The Limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgment. It is,



thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act and except to the extent noticed hereinbefore."

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(iii) 1974 ACJ 491 (Thilagavathy and others Vs. Sundaram and another), wherein at paragraph 6, it has been held as follows:

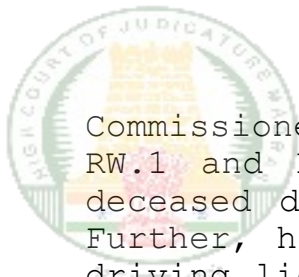
6. Before making the insurer liable, it is necessary for the claimants to prove that the insured has become legally liable to pay any compensation in respect of the deceased. The insured would be legally liable if the deceased had been his employee. He may also be legally liable if the deceased has committed a tortious act against the third parties. But, in this case, we have found that the deceased was not the employee of the insured. The case of the claimants themselves is that the deceased was not guilty of rashness and negligence and did not commit any tortious act. It would, therefore, follow that no foundation has been laid for the vicarious liability of the insured."

7. The contention of the learned counsel appearing for the appellant is that the deceased being the son of the 7th respondent / owner of the Tractor and was not working as a driver and that the deceased did not possess valid driving licence. The contention of the learned counsel appearing for the appellant that a son cannot be employed by father is without merits. There is no prohibition for a son or relative to work under his father or relative. Both the above contentions were considered by the the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli and were rejected. The Judgments relied on by the learned counsel appearing for the appellant do not advance the case of the appellant. The reasoning of the Commissioner that there is no prohibition for the son to work under his father and the same is generally prevalent in the Village and that there is no reason to interfere with the said reason.

8. As far as the driving licence is concerned, the appellant has examined Officials from the RTO as RW.1 and its employee as RW.2. The appellant has not proved that the deceased did not possess driving licence at the time of accident. RW.1 has deposed that the person can obtain a driving licence from any other RTO by producing proof of residence and that in the said Road Transport Office documents were computerised only in the year 2007. Since the deceased died in the year 2006, they cannot say about the services rendered by the deceased.

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9. The Commissioner for Workmen's Compensation (Deputy



Commissioner of Labour), Thirunelveli, considering the evidence of RW.1 and RW.2 held that the appellant failed to prove that the deceased did not possess driving licence at the time of accident. Further, he has observed that even if the deceased did not possess driving licence, the appellant is liable to pay compensation at the first instance. The Commissioner directed the appellant, to deposit the amount, but, did not order to recover the same from the 7th respondent. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, has held that the appellant failed to prove that the deceased did not possess driving licence at the time of accident and therefore, the question of pay and recovery does not arise.

10. In the result, this Civil Miscellaneous Appeal is dismissed, by confirming the order dated 30.09.2010, passed in W.C.No.59 of 2007, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The appellant / Insurance Company is directed to deposit the amount awarded by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli to credit of W.C.No.59 of 2007, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. The respondents 1 to 6 / claimants are entitled to their share as per the apportionment fixed by the Tribunal. On such deposit being made, the respondents 1 to 4 / claimants are permitted to withdraw their share on filing necessary application. The share of the minor respondents 5 and 6 shall be deposited in any one of the Nationalized Banks till they attain majority. The mother of the minor respondents 5 and 6 / first respondent is permitted to withdraw the interest of minors once in three months directly from the Bank.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To

The Deputy Commissioner of Labour, Workmen's compensation Act, Thirunelveli.

Copy to:

The Record Keeper, VR Section,

Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.85268

+1cc to Mr.R.MEENA KUMARI, Advocate, SR.No.84831

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