

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.09.2019
Pronounced On	03.10.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.M.A.(NPD).No.2814 of 2003
and
C.M.P.No.3324 of 2004

National Insurance Company Limited,
Tiruchengodu.

.. Appellant

Vs

1.Malar
2.Murugan
3.Raja Rig Service,
No.99, Sankagiri Road,
Tiruchengodu.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 30.06.2003 made in W.C.No.420 of 2001 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem.

For Appellant : M/s.N.B.Surekha

For Respondents : No appearance

J U D G M E N T

The appellant is the Insurance Company and is aggrieved by the impugned order passed by the Deputy Commissioner for workmen's Compensation, Salem dated 30.06.2003 in W.C.No.420 of 2001.

2.By the impugned order, the Commissioner for workmen's Compensation (Deputy Commissioner of Labour) has allowed the claim petition filed by the respondents/claimants who are the mother and father of the deceased Palani who was aged about 25 years.

3.The deceased Palani was employed as a driver with the 3rd respondent Raja Rig Services and was sent for digging a bore well to Dhanbad Area Bihar. The deceased Palani apparently suffered from jaundice and he was admitted in the hospital in Bihar on 11.07.2001 and was thereafter discharged from the hospital on 15.07.2001. He thereafter boarded a train from Bihar to Erode but was found dead on 18.07.2001.

4.Under these circumstances, the deceased Palani's body was sent for postmortem on 19.07.2001 wherein the doctor conducted the postmortem and concluded that the deceased Palani died due to jaundice.

5.By the impugned order, the Deputy Commissioner for workmen's compensation has allowed the compensation to the respondents/claimants under provisions of the Employment Compensation Act, 1923 (formerly Workmen's Compensation Act, 1923) on the ground that the appellant insurance company has not produced any individual witness that the deceased Palani died due to the natural death.

6.The learned counsel for the appellant submits that the documents and the depositions of the Station Master and that of the Doctor who conducted the postmortem clearly shows that the deceased Palani died on account of jaundice and not on account of accident in the course of employment. Therefore, the compensation awarded by the Deputy Commissioner of Workmen's Compensation is liable to be set aside.

7.In this connection the learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **Shakuntala Chandrakant Shreshti vs Prabhakar Maruti Garvali & Another**, (2007) 11 SCC 668 and refers the paragraph No.40 of the decision, which reads as under:-

40. A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law. From the order passed by the Commissioner, it appears, he has not arrived at a finding that the job involved any stress or strain. It was merely stated that he was working as a khalasi in a truck which was going to Tavarewadi Village from Kolhapur to get the milk. The autopsy was conducted at Chandgad District Hospital. The driver Parasharam Chandrakant Shreshti admittedly brought him to hospital. He was his brother. The post-mortem examination commenced from 6.30 a.m. on 28-9-2002 and ended at 7.30 a.m. on the same day. From the post-mortem report, it appears that in the accompanying report, it is stated that the death was due to sudden heart attack. When exactly the death took place is not known. It will bear repetition to state that under what circumstances the death took place is also not known. There was also no pleading in this behalf. The Commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a causal connection between accident and serious injury so as to fulfil the requirements of the terms "out of employment". Indisputably, there has to be a proximate nexus between cause of death and employment. A stray statement made by the

appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly, she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in the cross-examination.

8.In above decision the deceased was working as cleaner, who died due to heart attack. The Hon'ble Supreme Court concluded that the death was due to sudden heart attack and therefore no compensation can be awarded to the claimants.

9.The learned counsel also referred the decision of this court in **National Insurance Company Limited vs Madesh and Another**, 2017 SCC OnLine Mad 22162.

10.In the above case, the driver of the lorry himself met with an accident while riding a Motor Cycle for buying a fan belt for the lorry. This court concluded that the lorry Registration No. KA 01 MG 0545 which was insured with the appellant – Insurance Company was not involved in the accident and that there was a collusion between two motor cycles on 28.03.2011, in which, the claimant was injured and was not entitled to the compensation. In paragraph No.13 reads as under:-

13. Admittedly, the lorry Registration No. KA 01 MG 0545, which was insured with the appellant-Insurance company, was not involved in the accident. There was a collusion between two motor cycles on 28.03.2011, in which, the claimant was injured. Had the lorry met with an accident and had the claimant sustained injuries out of the said accident, in that case, the Insurance Company is liable to pay the compensation. Here, the lorry was not at all involved in the accident. Even the First Information Report, produced by the appellant, would establish that it was a case of hit and run.

11.The learned counsel for the appellant submitted that the death did not take place in the course of employment.

12.The learned counsel for the appellant has raised the following substantial questions of law:

- i. Has not the Hon'ble Commissioner for Workmen's Compensation misdirected itself in law in fastening the liability on the appellant/Insurance Company totally overlooking that there was absolutely no privity of contract between the deceased and the 3rd opposite party in respect of the contract regarding employment?
- ii. Has not the Hon'ble Commissioner for Workmen's Compensation misdirected itself in law in holding that the death of Palani occurred by an accident arising out of and in the course of the employment of the deceased with third opposite party totally overlooking that the Exhibit P.1. First Information Report specifically mentioned that a dead body was found in the Erode Railway Junction and none alleged to

have accompanied the deceased had either spoken to the deceased's employment as the driver under the 3rd respondent nor the postmortem revealed any identity of the person related to any caused arising out of or in the course of employment?

- iii. Has not the Hon'ble Commissioner for Workmen's Compensation erred in misdirected himself in law in misinterpreting the provisions of the Workmen's Compensation Act and in particular Section 3 (i) of the W.C.Act so as to attract any liability to be incurred by the Appellant/Insurance Company in respect of the death which was found to have occurred due to free existing decease?
- iv. Has not the Commissioner for Workmen's Compensation in any event misdirected itself in law awarding of Rs.326836/- in favour of the claimants who had failed to establish their dependency or the deceased employment with the 3rd respondent?

13. There is no representation for the respondents/claimants who are the parents of the deceased employee.

14. I have considered the submissions made by the learned counsel for the appellant/Insurance Company. The postmortem report which was filed as Ex.A5 clearly shows opinion that the deceased Palani appears to have died of hepatosplenomegaly, Jaundice and Gastro-internal bleedings and shock. There is no evidence to show that the deceased died on account of any personal

injury during the course of employment. The death in the present case is on account of natural cause and not on account of any accident or any personal injury arising out of and in the course of employment of the deceased. Therefore, compensation under Workmen's Compensation Act, 1923 awarded is liable to be interfered.

15. Therefore, I am of the view, the order passed by the Commissioner for workmen's Compensation (Deputy Commissioner of Labour) is liable to be set aside.

16. In the light of the above, substantial questions of law raised by the appellant in the present Civil Miscellaneous Appeal are answered in favour of the appellant.

17. Accordingly, the present Civil Miscellaneous Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

03.10.2019

Index : Yes/No
Internet : Yes/No
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To

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

2.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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Pre-Delivery Judgment
in

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