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IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	05.11.2019
Pronounced On	15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1211 of 2005

and

C.M.P.No.7599 of 2005

Tamil Nadu State Transport Corporation,
(Villupuram Division - II) Limited,
Vellore - 632 009.
Rep. by General Manager

...Appellant

VS

1.M.Shanthi

2.Samadhana Mary

...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 30.12.2004 made in W.C.No.221 of 2003 by the Deputy Commissioner of Labour - 1, Chennai.

For appellant : Mr.C.Manohar Gupta for
Mr.Gupta & Ravi

For R1 & R2 : No appearance

J U D G M E N T

The appellant is aggrieved by the impugned order dated 31.12.2004 passed by the Deputy Commissioner of Labour - I in W.C.No.221 of 2003.

2.By the impugned order, the Deputy Commissioner of Labour-I has awarded a sum of Rs.2,11,790/- as compensation to the respondents/claimants.

3.Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

4.It is the case of the appellant the deceased G.Robert was employed for the capacity of Junior Engineer to check and maintain of the bus operated by the appellant. He was not authorised to drive any vehicle. While driving a bus on the Rajaji Salai junction at N.S.C.Bose Road, Chennai on 29.06.1997 at about 11.30 p.m, the deceased employee G.Robert



met with a fatal accident and died on the spot. Therefore, the respondents/claimants filed claim petition for compensation. The Deputy Commissioner of Labour, Chennai has awarded the aforesaid compensation. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

5.It is further submitted that the respondents/claimants have filed a claim petition with the delay of 1180 days and therefore the claim petition was barred. It is therefore submitted that the Deputy Commissioner of Labour ought not to have awarded the aforesaid compensation. It is stated that the deceased was not authorised to drive the bus and was not in possession of a valid driving licence to drive the heavy motor vehicle namely the bus and therefore the compensation was wrongly awarded to the respondents/claimants.

6.That apart, the appellant submitted that the respondents/claimants were not entitled to file a claim since they are not depend of the deceased G.Robert within the meaning of Section 2(1)(d) of the Workmen's Compensation Act, 1923 and therefore the compensation was awarded by the Deputy Commissioner of Labour was liable to be set aside.

7.The learned counsel for the appellant drew my attention to proviso of Section 3(1)(b)(ii) of the Workmen's Compensation Act, 1923. It is further submitted that as per the said sub-clause of the proviso, the appellant would not be liable to pay the compensation.

8.Heard learned counsel for the appellant. There is no representation on behalf of the respondents. I have perused the records and considered the arguments advanced by the learned counsel for the appellant.

9.Short point that arises for consideration is whether the death of the deceased employee of the appellant can be considered as an employment injury within the meaning of section 3 of the Workmen's Compensation Act, 1923 and whether the compensation awarded to the respondent can be sustained or interfered with.

10.There is no dispute that the deceased was an employee of the appellant and that the deceased died driving a bus of the appellant allegedly without authorisation after carrying out certain repair and maintenance work on 29.06.1997.

11.It appears while driving the bus, the deceased hit the median as a result of which the bus capsized resulting in fatal death of the deceased. It is submitted that the deceased did not possess a valid driving license and therefore the appellant cannot be held liable under the provisions of the Workmen's Compensation Act, 1920.



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12.It is further submitted that the claim petition was filed almost after a lapse 1160 days and therefore the Deputy Commissioner of Labour-1 ought not to have entertained the claim petition on behalf of the respondents.

13.The Deputy Commissioner of Labour-1 has concluded that the appellant has not explained as to how the deceased employee was allowed to take the vehicle outside the depot. Therefore, the appellant was liable to pay compensation to the claimant.

14.The learned counsel for the appellant also drew my attention to the following decisions of this Court:-

- i. National Insurance Company, Ltd., vs R.Lakshmanan, 2001 (4) L.L.N 441.
- ii. National Insurance Co.Ltd. vs Kusum Rai and Others, (2006) 4 SCC 250.
- iii. Oriental Insurance Company Limited vs Prithvi Raj, (2008) 2 SCC 338.
- iv. Mackinnon Mackenzie and Co. (P). Ltd. vs Ibrahim Mahmmmed Issak, (1969) 2 SCC 607.

15.At the time of admission, this Court had allowed to withdraw 50% amount of the claim amounts. This court had framed the following substantial questions of law:-

- i. Whether the Deputy Commissioner of Labour was justified in awarding compensation for the death of the deceased when admittedly he was not authorised to drive the vehicle since he did not possess valid driving licence to drive heavy vehicle?
- ii. In the light of the proviso (2) of Sec.3 of the Workmen Compensation Act, whether the Deputy Commissioner of Labour was justified in holding that the Appellant is liable for payment of compensation for the death of the deceased when admittedly the deceased was neither authorised nor possess a valid licence to drive heavy vehicles?
- iii. Whether the 1st and 2nd respondents have locus standi to file the claim when they are not dependants within the meaning of Sec.2(1)(d)?
- iv. Whether the Deputy Commissioner of Labour was justified in condoning the delay of nearly five years when no cause much less any sufficient cause was shown by the 1st and 2nd respondent for the enormous delay in filing the claim?



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16.Of the 4 decisions cited by the learned counsel for the appellant, the 2 decisions i.e (ii) and say (iii) were rendered in the context of repudiation of liability in the hands of the insurance company for breach of conditions of the insurance policy. Therefore, they are not relevant to the facts of the case.

17.Under Section 3 of the Workmen's Compensation Act, 1923, the employer is liable to pay compensation if personal injury is caused to a workmen by accident. Section 3(1) of the Act as it stood at the relevant time. It reads as follows:

"3.Employer's liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a)in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b)in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to-

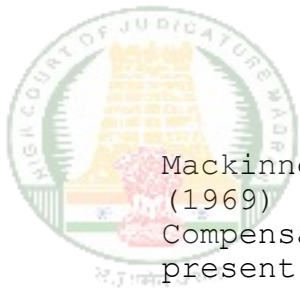
(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen;"

18.The employer can plead defence only in respect of any injury, not resulting in death, caused by an accident which is directly attributable to wilful disobedience of an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen or in case of wilful removal or disregard by the workmen of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of the workmen. These exceptions are applicable only in case of injury not resulting in death. In this case of death there are no exceptions provided in the provisio to Section 3. They are not attracted in the facts of the present case.

19.The decision of the Court rendered in Branch Manager, National Insurance Company vs R Laxmanan, 2001 (4) LLN 441 of this court and the decision of the Honourable Supreme Court in



Mackinnon McKinzie And Co. (P) Ltd vs Ibrahim Mohammed Issak, (1969) SCC 607 though rendered in the context of Workmen's Compensation Act, 1923 are not relevant to the facts of the present case. In the last mentioned case, death of the seamen was not proved.

20. In the first mentioned case in Branch Manager, National Insurance Company vs R Laxmanan, 2001 (4) LLN 441 supra though it was rendered in the context of Motor Vehicle Act, 1988 and the Workmen's Compensation Act, 1923 and exonerated the insurance company, the liability of the owner of the vehicle was upheld.

21. Therefore, the appellant cannot take the defence that the deceased employee was not authorised to drive the vehicle. The appellant has also not explained as to how the deceased was allowed to drive the vehicle from the garage. The appellant should have ensured that unauthorised persons are not allowed to take the vehicle outside the garage. In this case there is no denial that the deceased was in employment of the appellant and had taken of the vehicle from the garage though allegedly without permission. However, it is inconceivable in a large organization, removal would have been without permission as there are security guards manning of the movement of vehicles.

22. Therefore, questions of law No. i & ii are answered against the appellant. As far as, question of law No. iv is concerned the appellant had not raised any question on that score before the Deputy Commissioner of Labour. Therefore, same cannot be agitated now in this appeal. Therefore, question of law No. iv is also answered against the appellant.

23. Therefore, the only surviving issue to be considered in the present case is whether the claimants who were sisters of the deceased, one of whom was married and the other unmarried but were stated to be dependent on the income of the deceased were entitled to compensation under the Act as dependents of the deceased or not.

24. Sub-clause (iii) of clause (d) of sub-section (1) of Section 2 of the Act reads as follows:-

"dependent" means any of the following relatives of a deceased workman, namely:-

(i)

(ii)

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death,

(a) omitted

(b) omitted



(c) omitted

(d) a minor brother or an unmarried sister or a widowed sister if a minor"

25. Under, Sub-clause (iii) of Clause (d) of Sub-section (1) of section 2 of the Act, an unmarried sister who is dependent on the earnings of the workman at the time of his death is a dependent. The appellant ought to have let in evidence to show that one of the unmarried sister namely the 2nd respondent was not dependent on the deceased employee. Mere averment in the counter that the claimants were not dependent on the income of the deceased by itself was not sufficient to jettison the claim.

26. In the claim petition, there is a clear averment that both the mother and father of the deceased and the claimant had died long time back and that they were dependent on the income of the deceased. Therefore, in absence of contra evidence, the 2nd respondent who was admittedly unmarried at the time of the claim petition was entitled to receive compensation as she is a dependent of the deceased employee.

27. Therefore, I am of the view the substantial question of law raised by the appellant regarding maintainability of the claim by the respondents is to be partly answered in favour of the 2nd respondent. Though the 1st respondent was already married, it has no bearing on the amount awarded as compensation. Considering the fact that the 2nd respondent was a dependent of the deceased, substantial question of law questioning regarding the locus standi of the 2nd respondent to file a claim answered against the appellant.

28. Accordingly, the present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour - 1, Chennai.

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

+1cc to Mr. Gupta and Ravi, Advocate SR.No. 95323

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and

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A. SK (21/01/2020)