

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1357 of 2005

The National Insurance Company Limited,
No.758, Ananda Vikadan Building,
Chennai.

.. Appellant/3rd opposite Party

vs.

1. R.Varalakshmi
2. Pooja (Minor)
3. Monisha (Minor)
4. Vajaravelu
5. Chandra
6. A.M.A.Rawoof
7. L.V.Ramai .. Respondents/Appellants & 1st and 2nd Opposite Party
(RR-2 & 3 Minors rep by Guardian
and next friend R-1 Mother R.Varalakshmi)

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 6.9.2004 made in W.C.No.176 of 2004 on the file of the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-600 006.

For Appellant : Mr.D.Bhaskaran

For respondents : Mr.S.N.Kirubanandam
1 to 5

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 6.9.2004 made in W.C.No.176 of 2004 on the file of the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-600 006.

2. The case of the appellant is that the 1st respondent is the wife of the deceased Raghu and the respondents 2 and 3 are the children of the deceased Raghu whereas the 4th and 5th

respondents are the parents of the deceased Raghu. The deceased was a driver working under the 6th respondent in his Lorry bearing Registration No.KA 01 A 6364 and was drawing a salary of Rs.5,000/- including batta at the time of accident. While so, during the course of his employment, on 16.1.2004 at about 3.00 a.m., when the vehicle was coming to Madras from Andhra Pradesh near Chetty Gunta and Renugunta, Andhra Pradesh, the vehicle met with an accident, as a result, the driver Raghu died on the spot. At that time, he was aged about 33 years. The said vehicle was insured with the appellant National Insurance Company by the 7th respondent for the period from 06.03.2003 to 05.03.2004. Subsequently, the insurance was transferred to the name of the 6th respondent herein, the employer of the deceased Raghu on purchase of the said vehicle. Therefore, the respondents 1 to 5 herein/claimants made a claim of Rs.6,00,000/- under the Workmen Compensation Act with interest at 18% p.a. against the appellant herein and the respondents 6 and 7 herein before the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-600 006 in W.C.No.176/2004.

3. The appellant herein refuting the claim of the claimants filed a Counter Affidavit stating that the deceased was employed with the 6th respondent and since the Insurance in respect of the vehicle-in-question was not stand in the name of the 6th respondent, the employer of the deceased, the appellant herein is not liable to pay any compensation to the claimants. Further, the claimants have not given notice under Section 10 of the Workmen Compensation Act, 1923. Hence, prayed for dismissal of the Claim Petition of the Claimants.

4. The Deputy Commissioner of Labour For Workmen Compensation-II at Chennai by an Award dated 06.09.2004 made in W.C.No.176/2004, directed the Appellant Insurance Company to pay a compensation of Rs.3,87,489/- along with Funeral Expenses totalling Rs.3,89,989/- to the claimants within 20 days from the date of receipt of a copy of that Award, failing which, to pay an interest @ 12% p.a. from the date of accident till the date of realisation on the ground that the vehicle involved in the accident was insured with the appellant Insurance Company. Aggrieved over the same, the present Civil Miscellaneous Appeal has been filed.

5. While admitting the Civil Miscellaneous Appeal by this Court, by order dated 28.04.2005, the following substantial questions of law have been framed:

1. Whether on the transfer/sale of the vehicle, the policy of insurance issued already in favour of the transferor/seller, in the absence of intimation about such transfer, lapses and the insurance company cannot be transferred

with liability;

2. Whether the Deputy Commissioner of Labour can award compensation to person not coming under the purview of Workman as defined under Section 2(n) of the Act;

3. Whether the Authority has jurisdiction to entertain the above claim in the facts and circumstances of the case;

4. Whether the Deputy Commissioner of Labour can award compensation for alleged accident when employment is not proved; and

5. Whether the Deputy Commissioner of Labour was correct in holding that the appellant is liable to pay the compensation awarded in spite of the fact that there is no insurable interest on the date of accident.

6. Heard the learned Counsel for the appellant and the learned Counsel appearing for the claimants 1 to 5/respondents 1 to 5 herein.

7. The brief facts show that the deceased Raghu was employed under the 6th respondent herein in his Lorry as a driver and the same was met with an accident on on 16.1.2004 at about 3.00 a.m., when the vehicle was coming to Madras from Andhra Pradesh near Chetty Gunta and Renugunta, Andhra Pradesh resulting the death of the deceased Raghu. Subsequently, the claimants 1 to 5/respondents 1 to 5 herein have filed a Claim Petition before the Deputy Commissioner of Labour For Workmen Compensation-II, Chennai who also passed an award dated 06.09.2004 in W.C.No.176/2004, thereby directing the Appellant Insurance Company to pay a compensation of Rs.3,87,489/- along with Funeral Expenses totalling Rs.3,89,989/- are also not in dispute. Aggrieved over the same, the present appeal came to be filed. According to the appellant Insurance Company, the Deputy Commissioner of Labour, has passed an award for a sum of Rs.3,89,989/- against the Insurance Company when there is no agreement between the 6th respondent and the appellant and the appellant had not even transferred the Insurance Coverage Policy for the vehicle involved in the accident from the name of the 7th respondent to the name of the 6th respondent, the appellant is not liable to make the award amount for the simple reason that the Deputy Commissioner of Labour has failed to note that on the transfer/sale of the vehicle covered under the policy lapses, the transferee cannot take advantage of the policy in case of the transferor/vendor.

8. But this Court is unable to find any merit in the said submission of the learned Counsel for the appellant. The reason being that when there was an insurance coverage on the vehicle and a fatal injury has been caused to the deceased by the usage of the vehicle and the insurance coverage was also with the

vendor of the vehicle, the appellant Insurance Company cannot escape from the liability of paying the compensation to the claimants. That apart, there is no error in respect of the quantum of compensation arrived at by the Deputy Commissioner of Labour. Therefore, the impugned award passed by the Deputy Commissioner of Labour cannot be found fault with. Secondly, it is also admitted that the appellant has already deposited the entire award amount, hence, I find no merit in the present Appeal.

9. In the result, the Civil Miscellaneous Second Appeal fails and the same is accordingly dismissed. The claimants are entitled to withdraw their shares in the award amount, if not withdrawn already. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-600 006.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.69255

+1cc to Mr.S.N.Kirubanandam, Advocate SR.No.69450

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C.M.A.1357 of 2005

PA (CO)
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