

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1857 of 2005

and

C.M.P.No.10222 of 2005

The National Insurance Co.Ltd.,
Officers Lane,
Vellore. Appellant

Vs

1.Tmt. Sowri
2.Minor.Christina
3.Minor.Roya Thavamani

RR1 & 2 rep. by mother and next
friend the 1st respondent

4.Thiru. K.L.Sarma
Director, M/s.K.L.Coal Carriers P. Ltd.,
Niljai Village, Yeotmal, Maharashtra State.
5.Thiru.Umath Singh Rathi.
C/O. M.S.K.L.Coal Carriers P. Ltd.,
Transit Hostel,
Room No.2, Kukoos District,
Chandrapur, Maharashtra State. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, to set aside the award dated 11.03.2004 made in W.C.No.113 of 1999 on the file of the Commissioner for Workmen's Compensation - I, Chennai 600 006. (Deputy Commissioner of Labour - I, Chennai 600 006).

For Appellant : Mr.S.Vadivel
For R1 & R3 : No appearance
For R4 7 R5 : Not ready in notice

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 15.03.2005 passed by the Commissioner for Workmen's Compensation - I, Chennai - 600 006 (Deputy Commissioner of Labour - I, Chennai 600 006) in W.C.No.113 of 1999.

2.By the impugned order, the said authority has awarded a sum of Rs.1,92,140/- and interest at 12% from the date of accident in case there is a failure to deposit the aforesaid amount within 30 days from the date of the said order.

3.On 18.07.2005, while admitting the present Civil Miscellaneous Appeal, this court has framed the following substantial question of law:-

"On the established facts in this case, has not Workmen's Compensation Tribunal committed an error of law in drawing a conclusion that the deceased is a Workman under his employer which is opposite to the legal materials available on record?"

4.The case of the appellant Insurance Company is that the deceased Xavier Rock was not in employment of the 5th respondent and therefore the amount that has been awarded was contrary to the provisions of the Employee's Compensation Act, 1923 (formerly Workmen's Compensation Act, 1923).

5.The learned counsel for the appellant submitted that the deceased was only an employee of the 4th respondent and was not an employee of the 5th respondent the owner of the lorry involved in the alleged accident. The Deputy Commissioner of Labour - I has gone beyond the scope of claim petition while passing the award. It is stated that there was no privity of contract between the appellant and the 4th respondent.

6.I have considered the arguments advanced by the learned counsel for the appellant and perused documents.

7.The deceased Xavier Rock died while loading/unloading tires from the vehicle bearing registration No. MH 34 A 2431 of the 5th respondent, insured with the appellant. In the impugned order, the Deputy Commissioner of Labour - I, Chennai has concluded that the 4th and 5th respondents were partners in business and therefore, even though the deceased Xavier Rock was an employee of the 4th respondent, the appellant as the insurer of the vehicle of the 5th respondent bearing registration No. MH 34 A 2431 would be liable to pay the compensation to the claimants on account of the death of the said Xavier Rock.

8.There is no dispute that the deceased died in the course of employment which entitled the claimants to the compensation under the provisions of the Workmen's Compensation Act, 1923 (Now amended as Employment's Compensation Act, 1923).

9.The findings of the fact arrived by the Deputy Commissioner of Labour - I, Chennai that the 4th and 5th respondents were partners in business, it has not been

10. Therefore, the substantial question of law raised by the appellant cannot be answered in view of the findings of facts arrived by the Deputy Commissioner for Labour-I.

11. I do not find any merits in the present Civil Miscellaneous Petition filed by the appellant. In the light of the findings of facts arrived by the Deputy Commissioner for Labour-I, Chennai 600 006, the substantial question of law is answered against the appellant while giving liberty to the appellant to recover the amount from the 4th and 5th respondents.

12. The present Civil Miscellaneous Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr. Vadivel, Advocate, S.R.No. 77830

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MG (CO)
GN(13/11/2019)

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