

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.2678 of 2006

1.Ananthayee  
2.Karuppanna Gounder  
3.Nallammal  
4.Chandra

...Appellants/Petitioners

Vs.

1.Maragatham  
2.United India Insurance Co. Ltd.,  
Divisional Office,  
104-A, Peramanur Main Road,  
Salem-7.

...Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Commissioner, Workmen Compensation, Salem made in W.C.No.494 of 2004 dated 10.07.2006.

For Appellants : Mr.M.Sudhakar  
For Respondent : R1-Left  
Mrs.I.Malar for R2  
Standing Counsel

ORDER

This appeal has been directed against the impugned award dated 10.06.2006, awarding a compensation of Rs.3,16,146/- as compensation along with Rs.2,500/- towards funeral expenses with interest at the rate of 7.5% p.a. from the date of accident till the date of realisation.

2.Learned counsel for the appellants filed this appeal, seeking enhancement of compensation for the loss of life of the bread winner of the family. Learned counsel for the appellants would submit that the husband of the first appellant, Periyasamy was employed as a Cleaner in the lorry bearing Registration No.TDL 7787. On 24.05.2003 at about 11.30p.m. night, the deceased Periyasamy was on duty as a Cleaner in the above said lorry but the duty driver of the lorry, Sakthi took the lorry very rashly and negligently and hit the break down vehicle parked in the road side. Thus, the driver of the lorry drove the lorry in rash and negligent manner without following the

traffic rules and caused the accident. With the result, the Cleaner Periyasamy died on the spot immediately. A case was also registered before the Attayampatty Police Station in Crime No.293/2003 under Sections 279 and 304-A IPC.

3.As the deceased was earning a monthly sum of Rs.5000/- including other allowances, more particularly, when G.O.(2D) No.3, Labour and Employment (J1) Department dated 06.01.2003 was already issued fixing the minimum daily wage at Rs.129/- in B Zone, which are all types of Municipalities and Township, G.O.(2D) No.3, Labour and Employment (J1) Department dated 06.01.2003 ought to have been considered by the Commissioner. It has not been done so far in the present case. Moreover, the place of accident is Periya Seerakapadi, Salem, which is coming under the Municipalities viz., B Zone. Therefore, for B Zone, anyone is employed as Lorry Cleaner as per the Schedule viz., lorry Cleaner, Rs.129/- is fixed as the minimum rate of wages per day, which is as follows:

| Classes of employees |               | Minimum rate of wages per day |        |        |
|----------------------|---------------|-------------------------------|--------|--------|
| (1)                  |               | (2)                           |        |        |
|                      |               | Zone-A                        | Zone-B | Zone-C |
|                      |               | Rs.P.                         | Rs.P.  | Rs.P.  |
| (25)                 | Lorry Driver  | 143.50                        | 138.00 | 135.00 |
| (26)                 | Lorry Cleaner | 131.00                        | 129.00 | 126.00 |
| (27)                 | Roller Driver | 143.50                        | 138.00 | 135.00 |

Since there has been a complete non application of mind on the part of the learned Commissioner, who was an Authority working under the Compensation Act, the poor claimants, who have lost their only bread winner of the family, have been put to great prejudice with the award passed by the Commissioner.

4. Learned counsel appearing for the appellants also conclude his argument by submitting that the Insurance Company also admitted that the accident took place on 24.05.2003. It is therefore necessary to extract the relevant paragraph 7 of the counter affidavit filed by the respondent.

"7. The allegations made in para 1 of the petition are not correct. It is true that one breakdown lorry was parked on the extreme side of the road. But the driver of the lorry TDL 7787 has driven it in a rash and negligent manner without adopting the traffic rules and caused the accident. Further, this petition is bad for non joinder of necessary parties."

5. It is also pleaded that when the Insurance Company also admitted that the occurrence of the accident has taken away the valuable life of the bread winner of the appellants, the Insurance Company cannot be allowed to say that they are not liable to pay the compensation.

6. Learned counsel for the Insurance Company also submitted that when the claimants were not able to establish the relationship of the employer and employee between the first respondent and the deceased Periyasamy, secondly when they were unable to substantiate how the accident took place on the said date, even when the claimants accepts the claim of the Deputy Commissioner of Labour, the question of enhancement cannot be entertained. But, this court is not able to accept the said argument advanced by the learned counsel for the Insurance Company. The reason is that the counter filed before the Deputy Commissioner of Labour would clearly speak about the occurrence of the accident. It is relevant to extract the relevant portion of the counter affidavit filed by the Insurance Company.

"7. The allegations made in para 1 of the petition are not correct. It is true that one breakdown lorry was parked on the extreme side of the road. But the driver of the lorry TDL 7787 has driven it in a rash and negligent manner without adopting the traffic rules and caused the accident. Further, this petition is bad for non joinder of necessary parties."

7. No doubt, in paragraph 4 of the counter, the Insurance Company has disputed the relationship of employer and employee, it is not known as to how the Insurance Company disputed the relationship between the employer and employee. Unless the first respondent, the owner of the vehicle comes and disputes the relationship of employer and employee, the Insurance Company is not competent to set up a case in favour of the first respondent.

8. Secondly, when the claimants have come to this Court seeking enhancement of compensation as against the award passed, this Court can look into only the issue raised in the present appeal as on the date of deciding the quantum of compensation by the Deputy Commissioner of Labour, G.O.(2D) No.3, Labour and Employment (J1) Department dated 06.01.2003 was already in existence making clear that for Zone B, which is consisting of all types of Municipalities and Townships, the minimum wages payable to the lorry cleaner has been fixed at Rs.129 per day.

9. In the present case, Rs.129/- is taken as daily wage of the deceased Periyasamy as per G.O.(2D) No.3, Labour and

Employment (J1) Department dated 06.01.2003. Since the Commissioner has forgotten to follow the G.O.(2D) No.3, Labour and Employment (J1) Department dated 06.01.2003, this Court finds impediment to allow the appeal. Accordingly, the award is modified as follows:

For Lorry Cleaner, the daily wage as per G.O.(2D) No.3, Labour and Employment (J1) Department dated 06.01.2003, is Rs.129/-. Therefore for 26 days =3354 (monthly wage)

Deceased age=25

Age Factor =216.91

Compensation Calculation =  $3354 \times 50 \times 216.91 / 100$

= Rs.3,63,758.07/-

10. Therefore, the Insurance Company/the second respondent is directed to pay a sum of Rs.3,63,758/- (Rupees three lakhs sixty three thousand seven hundred and fifty eight) with interest at the rate of 12% p.a. from the date of accident till the date of realisation, less the amount already deposited within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit made, the appellants/claimants are permitted to withdraw the same. The civil miscellaneous appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner,  
Workmen Compensation, Salem.

Copy To: The Section Officer, V.R.Section,  
High Court of Madras

+1 cc to M/s.I.Abrar Md Abdullah, Advocate Sr.No. 72966

+1 cc to Mr.T.Ravichandran, Advocate Sr.No.73934

AKM/23.10.19/4P-5C /

CMA No.2678 of 2006