

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.11.2019
Pronounced On	04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. No. 198 of 2008

1. Thangavel
2. Saraswathi ... Appellants/Petitioner

Vs

1. M.P. Kammukutty
2. K.P. Mohideen
3. The New India Assurance Co. Ltd.,
2nd Floor, J.R.D. Complex,
Odathupalam - 679 101. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore, dated 09.10.2007 passed in W.C. No. 44 of 2005.

For Appellants : Mr. K. Velmurugan
for Mr. P. Raja

For R2 & R3 : No Appearance

J U D G M E N T
सत्यमेव जयते

The Appellants are the parents of the deceased who was a roadside mechanic who died while fixing a puncture of a lorry belonging to the Second Respondent. It is the contention of the learned counsel appearing for the Appellants that the Deputy Commissioner of Labour erred in rejecting the claim petition with the following observation:-

"This Petition is filed by the Petitioners.
The written evidence filed by them and the

evidence let in by them during the cross-examination are contrary to one another. Though the aforesaid documents are contrary to one another, from sum and substance of all those documents, it is evident that the deceased Loganathan was running a workshop of four wheeler repair at a place called Aanakatti."

2. The learned counsel appearing for the Appellants submits that the definition of "workman" under Section (2)(n)(ii) is wide enough to include even a Mechanic, Helper, Cleaner who have been recruited in any capacity in connection with the Motor Vehicles. The learned counsel specifically drew my attention to Section (2)(n) which reads as under:

- (2)(n) "Workman" means any person who is-
- (i) a railway servant as defined in (Clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989)), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
 - (a) a master, seaman or other member of the crew of a ship
 - (b) a captain or other member of the crew of an aircraft
 - (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle
 - (d) a person recruited for work abroad by a company
- and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;
- (ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any

person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

3.The learned counsel for the appellants relied on the following judgments:-

- i. S.Gopakumar vs G.Chandran Nair, 2017 (2) TN MAC 706 (DB) (Ker).
- ii.ICICI Lombard General Insurance Co.Ltd. Vs Sumitraben Kanubhai Jalaiya and others, 2019 ACJ 2626.
- iii.United India Insurance Company Ltd., vs M.Mangamma and Ors, 2004 (101) FLR 1165.
- iv.Jilesingh Sardar Singh and another vs Vikas Carriers Pvt. Ltd.and another, 2018 ACJ 1279.
- v. Shaikh Osmanali Chous vs New India Assurance Co.Ltd., and another, 2018 ACJ 1016.
- vi.Shivalinga Shivanagowda Patil and another etc. vs Erappa Basappa Bhavihala and etc., 2004 (1) ACJ 333.
- vii.New India Assurance Co.Ltd., vs Balwinder Kaur and others, 2018 ACJ 668.
- viii.National Insurance Co.Ltd., vs Jagjit Singh and another, 2018 ACJ 333.
- ix.Mohd. Anis Mohd. Elyea Khan vs M/s.Iltiza & Co., 2001 ACJ 2057.
- x.Oriental Insurance Co.Ltd., vs Murthaiah and others, 2019 ACJ 2933.
- xi.Asha Pralhad Karle and others vs Sarpanch, Gram Panchayat, Valan and others, 2018 ACJ 568.
- xii.Vardhman Clotha Stores and Ors vs Anil, 2004 (1) ACJ 393.
- xiii.Om Prakash and Another vs Surjeet, 1989 ACJ 854.
- xiv.Branch Manager, New India Assurance Co.Ltd.,

Trichy vs Thangammal and others, 2015 (2) TN MAC 267.

xv.Divisional Controller, G.S.R.T.C. Vs Ashok Kumar Keshavlal Parekh and Others, 2000 (1) ACJ 221.

xvi.National Insurance Co. Ltd., Palai vs Philomina Mathew and others, 1993 AIR (Kerala) 226.

xvii.Divisional Manager, United India Insurance Co. Ltd. Vs Gujjamma and Others, 2005 ACJ 1712.

xviii.Arunkumar vs Omana Amma, 2004 (1) ACJ 204.

xix.Anil Chandra Sharma and Another vs Alka Rani Ghosh, 2000 (1) ACJ 307.

xx.Sampuram Singh vs Mukhtiar Singh, 1992 (1) ACJ 393.

xxi.National Insurance Co. Ltd., vs P.Ramachandran, 2018 (1) TN MAC 374 (DB) (Ker).

4.Though the notice was ordered on the respondents, 1st respondent has only not been served and there is no representation for the other respondents. I do not find any reasons to keep the present Civil Miscellaneous Appeal pending. No prejudice will be caused to the respondents by this order that is passed in the present Civil Miscellaneous Appeal in their absence.

5. I have considered the arguments advanced by the learned counsel for the appellant and case laws submitted by the him. None of the above case laws are relevant to the facts of the present case. The definition of "workman" in Section 2 (n) (ii) read with Schedule II of the Workman's Compensation Act, 1923 makes its clear that a person would qualify as a "workman" for being eligible for compensation under the provisions of the Act if there was master and servant relationship between them. In other words, there should be an employer-employee relationship between them. In this case, admittedly, there was no employer-employee relationship between the deceased Loganathan and a owner of the lorry namely K.P.Moideen. There was merely a contract for services.

6.There was no contract of service which implies relationship of master and servant. In Kishori Lal vs Chairman E.S.I. Corporation, AIR 2007 SC 1819, it was held that implies relationship of master and servant and involves an obligation to

obey orders in the work to be performed and to its mode and manner of performance. In Indian Medical Association vs V.P.Shantha, (1995) 6 SCC 651 it was held that a contract of service implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. In Cassidy vs Ministry of Health, (1951) 1 All ER 574, it was held that in a contract of service the master can order or require what is to be done while in a contract of service he can only order or require what is to be done direct how it shall be done.

7. Consequently, neither the owner of the accident lorry nor the insurer of the lorry can be fastened liability under the provisions of the aforesaid Act.

8. Therefore, there is no merits in the present appeal against the impugned order of the Deputy Commissioner of Labour. The petitioners have been wrongly advised to approach the Labour Commissioner for compensation under the provisions of the Workman's Compensation Act, 1923 when indeed the appellants who are the dependants of the deceased may have been entitled to compensation under the provisions of the Motor Vehicles Act, 1988 and perhaps ordinary as Civil remedy.

9. Therefore, I am constrained to dismiss the present application filed by the appellant's very giving liberty to the appellant is to work out their remedy under the provisions of the Motor Vehicles Act, 1988 for just compensation or in a Civil Court.

10. The present appeal dismissed with the above observation. No cost.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/jen

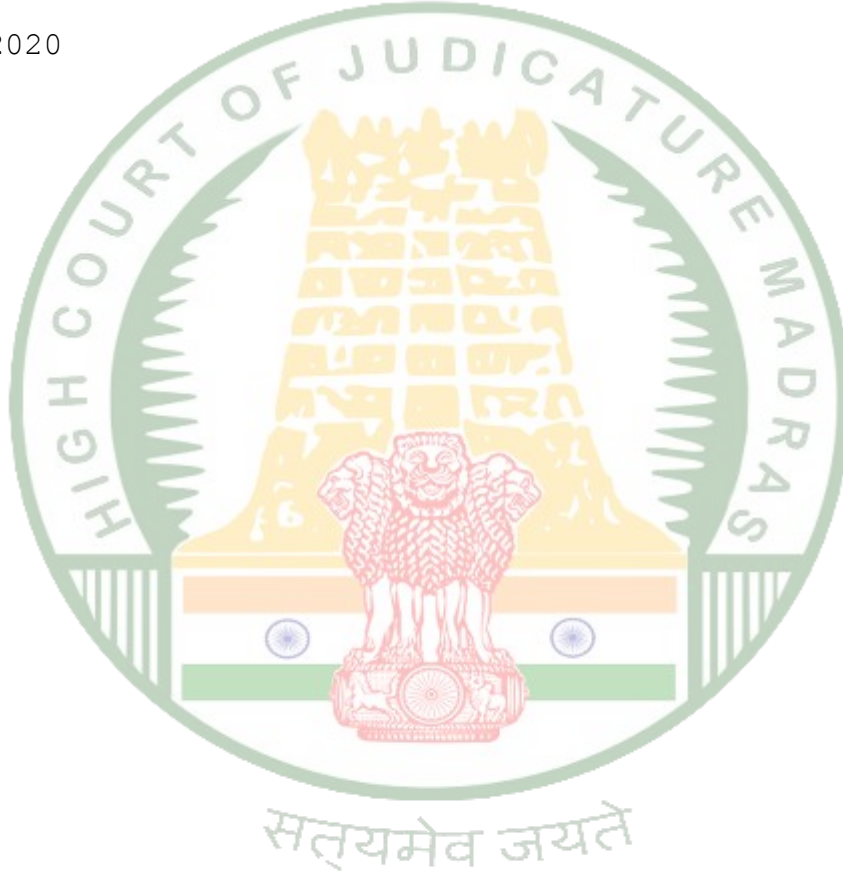
To

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

+lcc to M/s.Elizabeth Ravi, Advocate sr.101606

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