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IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.11.2019
Pronounced On	25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.793 & 794 of 2007
and
M.P.Nos.1 and 1 of 2007

M/s.Oriental Insurance Co. Ltd.,
R.V.K.Building, 1 Floor,
54, Thali Road,
Udumalai 641 126. ... Appellant in both CMAs.

VS

1.P.Kittan
2.Minor.Chellamuthu
3.Minor.Sekar
4.Minor.Selvi
(2 to 4 Minor respondents are
rep.by father and guardian P.Kittan)
5.S.Deivathaal ... Respondents in C.M.A.No.793/2007

1.Chellamuthu
2.Jalli Veeran
3.Kavitha
4.S.Deivathaal ... Respondents in C.M.A.No.794 of 2007

Common Prayer: Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Deputy Commissioner of Labour, Coimbatore, dated 14.11.2006 in W.C.Nos.121 & 122 of 2004.

For appellant : Mr.S.Arun Kumar
in both CMAs.

For Respondents : No Appearance
in both CMAs.

C O M M O N J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned orders dated 21.11.2006 and 14.11.2006 passed by the Deputy Commissioner of Labour, Coimbatore in W.C.Nos.121 & 122 of 2004.



2. By the impugned orders, the Deputy Commissioner of Labour has allowed the claim petitions filed by the legal representatives of the deceased Masani & Manjula respectively. The Mansani & Manjula who died on 24.03.2003 & 25.03.2003 respectively in a same accident while travelling in the insured vehicle of the 4th respondent in C.M.A.No.794 of 2007 / 5th respondent in C.M.A.No.793 of 2007.

3. The said vehicle insured with the appellant Insurance Company. The Deputy Commissioner of Labour has awarded a sum of Rs.2,75,203/- to the 1st to 3rd respondents/ claimants in C.M.A.No.794 of 2007 and Rs.2,87,815/- to 1st to 4th respondents / claimants in C.M.A.No.793 of 2007.

4. Aggrieved by the same, the appellant Insurance Company has filed these two Civil Miscellaneous Appeals on the ground that the deceased Masani & Manjula and 11 other persons who travelled on the accident vehicle bearing Registration No. TN 39 E 5955 of the owner were not authorised passengers. After loading the tomato from the farm, the vehicle was to deliver tomato in the market. The deceased and others travelled in the said vehicle. According to the appellant, they were gratuitous passengers in the said vehicle and thereafter the Deputy Commissioner of Labour erred in awarding compensation.

5. It is submitted that there was no employer employee relationship between deceased Masani and the 4th respondent C.M.A.No.794 of 2007 and similarly, between deceased Manjula and 5th respondent in C.M.A.No.793 of 2007. Therefore merely because the deceased Masani & Manjula travelled in the vehicle by itself will not fasten liability on the appellant merely because the appellant had insured with the vehicle of the 4th respondent in C.M.A.No.794 of 2007 / 5th respondent in C.M.A.No.793 of 2007.

6. It is further submitted that the FIR also merely states that the deceased Masani & Manjula and the co-passengers merely got into the vehicle. It is further submitted that in even otherwise the deceased were only gratuitous passengers along with other co-passengers. Therefore, the appellant cannot be held liable to pay compensation under the provisions of the Workmen's Compensation Act, 1923.

7. It is submitted that if at all, amount is to be paid by the 4th respondent/5th respondent in the respective appeal who is the owner of the vehicle.

8. Though notice has been served on the respondents in the respective appeals, there is no representation on their behalf.

9. Heard the learned counsel for the appellant and perused the records. The case of the appellant is that the deceased in the respective appeals were not the employee of Deivathaal,



the owner of the accident vehicle bearing registration No. TN 39 E 5955 and therefore the claimants who are the respondents in the respective appeals were not entitled to compensation under the provisions of the Workmen's Compensation Act, 1923.

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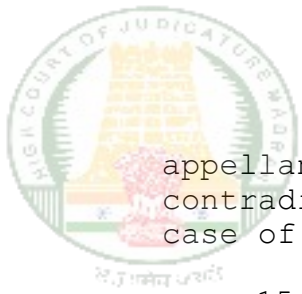
10. It is the case of the appellant that the deceased had plucked tomato in the garden of Dayalan and were paid a daily wages of Rs.30 and on the date of accident on 24.03.2003 had taken free ride along with 13 others in the accident vehicle driven by Shanmugam, the husband of Deivathaal. According to the appellant both the deceased were gratuitous passengers along with others and that the driver Shanmugam also did not process a valid license at the time of accident and therefore the appellant was not liable to pay compensation.

11. As far as the validity of license is concerned, the driver namely Shanmugam had processed a valid license which had expired on 11.3.2003. Shanmugam had 30 days to renew the license from the aforesaid date under the Motor Vehicle Act, 1988. The accident however took place before the expiry of 30th day. Therefore, it is of no significance as to whether the driver processed a valid license or not since the 30 days grace period had not expired on the date of accident.

12. As far as the argument that the 2 deceased and 12 other passengers took a free ride in the accident vehicle and were not the employees of the owner of the vehicle namely Deivathaal and that they were gratuitous passengers is concerned, I am of the view that in absence of any evidence to the contrary, the appellant cannot dislodge the burden of proof by merely letting in evidence through their investigation officer who purportedly collected informations after the work was assigned to him by his head much after the date of accident. The learned counsel for the appellant has placed much reliance on Exhibit P-11 FIR to state even as per the aforesaid document both the deceased and other persons who travelled in the accident vehicle on the fateful day after plucking tomato from the said Dayalan's farm, were merely gratuitous passengers. The findings of the investigation officer of the Appellant has to be corroborated by letting in independent evidence. In this case the appellant has failed to let in evidence.

13. Neither the appellant has filed a copy of the FIR nor the photo copy of the FIR in the court file is legible. In any event, statement in the FIR is of no significance as it is merely intended to set criminal law in motion where crime is reported before the jurisdictional Police State. Defence of the appellant merely remained a statement of the appellant without any corroboration.

14. Burden of proof was on the appellant and the owner of the vehicle namely Deivathaal to substantiate that the deceased were not employees of the said Deivathaal. I find the



appellant has not let in any evidence nor has elicited any contradiction from the owner of the vehicle to disprove the case of the claimants in the respective appeals.

15. Therefore, I do not find any merits in the present appeal. The impugned orders passed by the Deputy Commissioner of labour are well reasoned. I do not find any reasons to disturb with the compensation awarded to the respective claimants who are the respondents in the respective appeals.

16. In view of the above observation, both the appeals are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour,
Coimbatore.

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

+1cc to Mr. S. Arun Kumar, Advocate, S.R.No. 98169

C.M.A.Nos. 793 & 794 of 2007
and
M.P.Nos. 1 and 1 of 2007

PA (CO)
GN (22/01/2020)