

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2981 of 2008
and
M.P.Nos.1 to 3 of 2008

M/s The United India Insurance Co.Ltd.,
Lakshmi Bhavan, 3rd Floor,
609, Anna Salai, Chennai- 6.Appellant/3rd Respondent

vs

1.S.Devi
2.D.Lalitha
3.S.Swetha (minor)
4.S.Naveen (minor)
Minors rep. by their mother S.DeviRespondents
1to4/Petitioners 1to4
5.B.Thiyagu5th Respondent/1st
Respondnet
6.The New India Assurance Co.Ltd.,
45, Justice Basheer Ahmed Building,
5th Floor, Moore Street, Chennai - 1.
.... 6th Respondent /2nd respondent

Prayer: Civil Miscellaneous Appeals filed under Section 30 of
the Workmen's Compensation Act, 1923, to set aside the order
dated 24.04.2008 made in W.C.No.526 of 2006 on the file of the
Commissioner of Workmen's Compensation (Deputy Commissioner of
Labour - 2), Chennai, received on 24/06/2008

For Appellant : Mr.M.Krishnamoorthy

For R1 to R4 : Mr.G.R.M.Palaniappan

For R5 : No appearance

For R6 : Given up

J U D G M E N T

The appellant Insurance Company is aggrieved by the
impugned order dated 24.04.2008 passed by the Deputy
Commissioner of Labour - 2, Chennai in W.C.No.526 of 2006.

2.By the impugned order, the Deputy Commissioner of Labour-2 has awarded a sum of Rs.3,81,620/- as compensation to the 1st to 4th respondents/claimants who are the legal representatives of the deceased D.Suresh Kumar. The deceased Suresh Kumar was employed as a bus driver by the 5th respondent who was running travels called as Gajalakshmi Travels.

3. On the fateful day i.e 12.08.2006, the deceased had gone to attend the his duty between 02.00 p.m and 10.00 p.m but did not return and thereafter, on further enquiry, it was stated that the deceased Suresh Kumar drove a motor cycle of the 4th respondent and while driving on the G.S.T. Road, near the junction of Kannabiran Koil Street, he met with an accident. Thereafter, he was taken to the Chrompet Government Hospital, subsequently, shifted to the Government Hospital, Chennai -3 where after surgery on his head, he died on 18.08.2006.

4.Therefore, the 1st to 4th respondents had filed claim petition for compensation of Rs.7,58,240/-. After recording the evidences and records, the Deputy Commissioner has allowed the claim petition by awarding a sum of Rs.3,81,620/- as compensation to the 1st to 4th respondents who are the legal representatives of the deceased Suresh Kumar.

5.Aggrieved by the same, the Insurance Company has filed the present Civil Miscellaneous Appeal.

6.At the time of admission, this Court has framed the following substantial questions of law for consideration in this appeal:-

- i. Whether the Commissioner is justified in fastening liability by relying upon the oral evidences of RW 1 contradictory to the written complaint (Ex.A1) made by him to the police at the earliest point of time that the deceased was proceeding to attend personal work?
- ii. Whether the Commissioner was justified in relying upon the oral evidence of R.W.1 contrary to the documentary evidences in view of the provisions of Section 94 of the Indian Evidence Act?

7.Heard the learned counsels for the appellant and the 1st and 4th respondents.

8.The learned counsel for the appellant Insurance Company submits that in the FIR, the 5th respondent the owner of the bus has stated that the deceased had taken the motor cycle for his personal work and therefore, there was no employment

injury and thus no compensation should have been awarded. The learned counsel further submitted that the death did not occur in the course of employment. However, the Deputy Commissioner of Labour- 2 has relied upon the deposition of the 5th respondent who has resiled the statement given by him in the FIR.

9.The learned counsel for the appellant further submitted that the order of the Deputy Commissioner of Labour-2 was liable to be set aside. The 5th respondent had himself stated that the deceased Suresh Kumar taken the motor cycle for his personal work and therefore there was no employment injury.

10.The learned counsel for the 1st and 2nd respondents who are the legal representatives of the deceased Suresh Kumar submits the order of the Deputy Commissioner of Labour - 2 is well reasoned, requires no interference and the present Civil Miscellaneous Appeal is liable to be dismissed.

11.I have perused the order of the Deputy Commissioner of Labour - 2 and grounds of the appeal filed by the appellant Insurance Company. The authorities acting under the Workmen's Compensation Act are not governed by strict rules of evidence and base their findings by applying principle of preponderance of probability. Therefore, the order passed by the Deputy Commissioner of Labour - 2 based on such finding holding that the appellant was liable to pay the compensation as there was employer employee within the meaning of Section 3 of the Workmen's Compensation Act, 1923 between the deceased Suresh Kumar and the 5th respondent cannot be interfered with. I therefore do not find any merits in the present Civil Miscellaneous Appeal.

12.The present Civil Miscellaneous Appeal is disposed accordingly. Liberty is however given to the appellant to initiate appropriate proceedings to recover the amount from the 5th respondent in accordance with law. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Workmen's Compensation
Deputy Commissioner of Labour - 2, Chennai.

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

+2cc to Mr.G.R.M.Palaniappan, Advocate SR.93165

C.M.A.No.2981 of 2008
and
M.P.Nos.1 to 3 of 2008

VBA (CO)
CB (05/12/2019)



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