

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.351 of 2008

and

M.P.No.1 of 2008

M/s. The New India Assurance Company Ltd.,
Rep. by its Deputy Manager,
Chennai -1 Appellant

Vs

1. S.Rekha
W/o. Late. R.Srinivasan

2. Minor. Lohit

3. Minor Sushmita,
both Rep. by their Mother and
Natural Guardian S.Rekha

4. Resident Director,
M/s. Glenrock Estates,
Panthalur Post,
Nilgiris District. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 as against the Award dated 09.07.2007, passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour, Conoor), in W.C.No. 39 of 2001.

For Appellant : Michael Visuvasam

For Respondents : Mr.V.Ajay Khose (For R1 to R3)
No Appearance (For R4)

J U D G M E N T

The Appellant Insurance Company is aggrieved by the impugned order dated 09.07.2007 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour, Conoor) in W.C.No.39 of 2001.

2.By the impugned order, the Deputy Commissioner of Labour has awarded a sum of Rs.4,15,960/- as compensation to the 1 to 3 respondents who were claimants.

3.The learned counsel for the appellant submits that the order passed by the Deputy Commissioner of Labour is liable to be set aside as there is no clear discussion as to how the Deputy Commissioner came to the conclusion that there was a employment injury and that there was stress or strain, which may have contributed to the death due to heart attack and therefore, the order of the Deputy Commissioner of labour was liable to set aside.

4.The learned counsel for the appellant also submitted that the 4th Respondent management has categorically stated that it cannot be stated that there is an employment injury within the meaning of the Workmen's Compensation Act 1923 as the deceased R.Srinivasan was clerical staff. However, at the time of deposition on Radhakrishnan the manager of the 4th respondent employer gave a contrary statement supporting the case of the claimant.

5. It is submitted that not every case of death due to heart attack can be considered as employment injury and there should be evidenced to suggest stress or strain due to work resulted in the death. The learned Counsel for the appellant relied upon the following decisions:-

- i. Shakuntala Chandrakant Shreshti V. Prabhakar Maruti Garvali and another, 2007 ACJ 1.
- ii. Jothi Ademma V. Plant Engineer, Nellore Thermal Station and another, 2006 ACJ 2165.
- iii. Employees' State Insurance Corporation V. Francis De Costa, 1996 ACJ 1281.

6.The learned Counsel for the appellant submits that the facts in the first mentioned case are almost identical and therefore the Deputy Commissioner of Labour erred in awarding compensation to the respondents/claimants 1 to 3. He submits that the burden of proof was on the claimants to establish that stress and strain in the work lead to heart attack and eventual death. There is no evidence, the order passed by the Deputy Commissioner of workmen's Compensation Act was liable to set aside.

7.In the present appeal, the appellant has raised the 8 questions of law out of which the learned counsel for the appellants submits that questions of law Nos. 6 and 7 are relevant for this appeal which read as under:-

6. Is the Learned Deputy Commissioner right in holding that the death was due to stress and

strain, which indeed was due to the alleged employment of the deceased?

7. Is the Learned Deputy Commissioner right in holding that the death of the deceased was due to an injury caused by an accident arising out of and in the course of his employment?

8. I have considered the arguments advanced by the learned counsel for the appellant and the 1st to 3rd respondents and perused the records.

9. The deceased started from the 4th respondent Tea estate at 6.00 a.m and when the vehicle reached at Manimooly in Kerala State, suffered a heart attack and died despite treatment given in the hospital there. The deceased while travelling in a lorry bearing registration No. TN 43 Z 1082, owned by the 4th respondent management carrying Tea from the Tea Estate in Nilgiris to Kerala died after suffering heart attack on 18.06.2001.

10. The Hon'ble Supreme Court has recognised Cardiac Arrest can be considered as "employment injury" under the Workmen's Compensation Act, 1923 subject to evidence. The authority acting under the Act base their finding on preponderance of probability and are not expected to follow strict rules of evidence. In this case there are evidences to suggest that the deceased took arduous journey in the morning on 18.06.2001 and such journey would have caused stress or strain leading to heart attack and eventual death of the deceased. Claimants who are the dependants of the deceased are not expected to let in positive evidence. It would suffice if they make out a probable case before the authority. In case, the employer or his/her or their insurer wants to avoid the liability, they have to let in evidence to negate that probability.

11. In my view, therefore the order of the Deputy Commissioner of Labour granting compensation to the claimants cannot be interfered. At the same time, there is no harm in giving liberty to the appellant to initiate appropriate proceedings against the 4th respondent management/employer of the deceased employee, in case the appellant can make out a case to recover the amount from the 4th respondent in accordance with law. In case such proceedings are initiated in a civil court, the observation in the impugned order and in this order will not bind the said court. The appellant can let in positive evidence to recover the amount from the 4th respondent employer.

12. This Civil Miscellaneous Appeal is dismissed with the above observations. Liberty is given to the 1st to 3rd respondents to withdraw the amount lying in deposit, if it has

not been already withdrawn. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

ebsi

To

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

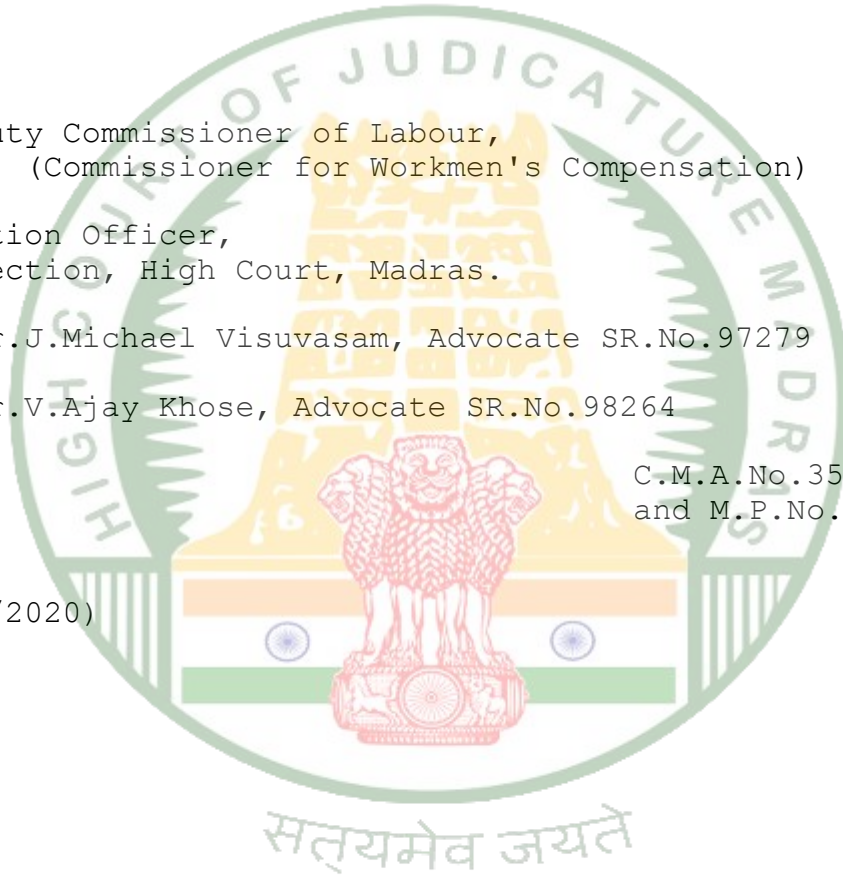
2.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.97279

+1cc to Mr.V.Ajay Khose, Advocate SR.No.98264

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and M.P.No.1 of 2008

RR (CO)
GMY (21/02/2020)



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