

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2267 of 2009
and M.P.No.1 of 2009

Branch Manager,
National Insurance Co. Ltd.,
81-D, Chetty Street,
Thiruchengodu.

... Appellant

vs

1.Govindammal
2.Selvem
3.Vijaya
4.Chitra
5.Kaveri
6.S.P.Venugopal

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award dated 03.08.2006 made in W.C.No.208 of 2002 on the file of the Workmen's Compensation Commissioner, DCL, Salem.

For Appellant : Mr.S.Arun Kumar
For R1 & R5 : Not ready in notice
For R6 : No appearance

J U D G M E N T

The appellant is aggrieved by the impugned order dated 03.08.2006 passed by the Workmen's Compensation Commissioner, Salem in W.C.No.208 of 2002.

2.By the impugned order, the Workmen's Compensation Commissioner has awarded a sum of Rs.2,36,891/- as compensation together with Rs.2,500/- for funeral expenses to the 1st to 5th respondent who are the legal representatives/dependents of the deceased G.Sakthivel.

3.It is the case of the 1st to 5th respondents, the said deceased G.Sakthivel was employed by the 6th respondent as a cleaner in the Rig Lorry bearing Registration No. TN 39 F 2788, on 20.09.2001 and while going from madras to Beed in Maharastra State, he had suffered a massive Heart attack and was taken to

S.D.Kays for medical treatment where he was declared dead on arrival.

4. Therefore, the 1st to 5th respondents who are the legal representatives of the deceased G.Sakthivel has filed a claim petition for compensation of Rs.3,00,000/-.

5. According to the appellant Insurance Company, the accident did not take during the course of employment and the deceased G.Sakthivel did not die due to an employment injury. The learned counsel for the appellant relies the decision of the Hon'ble Supreme Court in Jyothi Ademma vs Plant Engineer, Nellore and Another, 2006 (5) Supreme 327, wherein the court held as follows:-

6. Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

7. The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. [1903 AC 443 : 72 LJKB 787 : 89 LT 314 (HL)] it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, L.C. In Trim Joint District School Board of Management v. Kelly [1914 AC 667 : 83 LJPC 220 : 111 LT 305 (HL)] as follows:

"I think that the context shows that in using the word 'designed' Lord Macnaghten was referring to designed by the sufferer."

6.However, the Hon'ble Supreme Court has also held that heart attack due to stress and strain can also be considered as employment injury. The authority acting under the provision of the Act are not bound by strict rules of evidence. The order passed by the Deputy Commissioner of Labour under the Act is based on the Preponderance of Probability. The burden of proof is on the owner of the lorry and the Insurance Company. They have not discharged their burden of proof.

7.I therefore do not find any reasons to interfere with the impugned order passed by the Deputy Commissioner of Labour.

8.At the same time, I am inclined to grant leave to the appellant to pay and recover the amount from the 6th respondent owner of the lorry in case the appellant has valid grounds to recover the amount from the 6th respondent.

9.The present Civil Miscellaneous Appeal is dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Workmen's Compensation Commissioner,
DCL, Salem.

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

+1 cc to M/s.S.Arun Kumar,Advocate Sr.No. 95629

AKM/18.12.19/3P-4C /

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