

IN HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	29.11.2019
PRONOUNCED ON	10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.708 OF 2012

AND

M.P.NO.1 OF 2012

Divisional Manager
Oriental Insurance Co. Ltd.
Parimalam Complex,
Mettur Road, Erode - 9.

...Appellant

vs

1.Manonmani
2.Pradeeba (Minor)
3.Nandakumar (Minor)
2 and 3 are minors rep.by
their mother and natural
guardian Manonmani

4.Mangammal
5.Mohanasundram
6.N.Premavathi

...Respondents

Prayer:

Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 07.06.2004 passed in W.C.No.323 of 2003 on the file of the Commissioner for Workmen's Compensation, Salem, (Before the Dy. Commissioner of Labour, Salem).

For appellant : Mr.R.Sivakumar

For R1 to R4 : Mr.A.K.Kumarasamy

For R5 & R6 : Mr.V.S.Senthil Kumar

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 07.06.2004 passed by the Deputy Commissioner of Labour, Salem in W.C.No.323 of 2000.

2.By the impugned order, the Deputy Commissioner of Labour has awarded a sum of Rs.1,71,442/- as compensation to the 1st to 4th respondents who are the dependants of the deceased Saravanan.

3.The Deputy Commissioner of Labour further directed the appellant to deposit the aforesaid compensation within a period of 30 days from date of receipt of the order, failing which, the appellant was liable to pay the interest at 12% from the date of the accident.

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

5.In the present Civil Miscellaneous Appeal, the appellant has raised the following substantial questions of law for consideration:-

- i. Whether the Learned Deputy Commissioner is correct in coming to the conclusion that the deceased died during the course of his employment under the 6th respondent herein, when the respondents 1 to 4 contented that the deceased died during the course of his employment under the 5th respondent only?
- ii. Whether the Learned Deputy Commissioner is correct in coming to the conclusion that the deceased died during the course of his employment under the 6th respondent herein when the 6th respondent denied the employment of the deceased?
- iii. Whether the Learned Deputy Commissioner is correct in directing the Appellant to pay the compensation amount to the respondents 1 to 4 herein when the 6th respondent is not liable to pay any compensation to the respondents 1 to 4 herein?
- iv. Whether the Learned Deputy Commissioner is correct in directing the Appellant to pay the compensation amount to the respondents 1 to 4 herein when the Appellant is liable to indemnify the 6th respondent's workman only under the terms and conditions of the policy?

6.Heard the learned counsel for appellant and the respondents.

7.In the present appeal, the appellant has questioned the status of the deceased Saravanan as a workman within the meaning of the Section 2(n) of the Workmen's Compensation Act, 1923. It is the contention of the appellant Insurance Company that the

deceased Saravanan did not qualify workman with the meaning of the provisions of the aforesaid Act. It is submitted that the Deputy Commissioner of Labour erred in awarding the compensation to the 1st to 4th respondents.

8.The claim petition was originally filed against the 5th respondent herein as is evident from the copy of the claim petition. However, subsequently, the appellant was impleaded as the 3rd respondent therein while the 6th respondent herein impleaded as 2nd respondent in the proceedings before the Deputy Commissioner of Labour.

9.The learned counsel for the appellant submits that the deceased Saravanan was working as a "driller" and was not workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923 and therefore, the impugned order passed by the Deputy Commissioner of Labour is liable to be set aside.

10.Per contra, the learned counsels for the respondents submitted that the impugned order of the Deputy Commissioner of Labour is well reasoned and requires no interference.

11.I have considered the arguments advanced by the both sides counsels and gone through the pleadings and the order.

12.The only point that arises for consideration in this appeal is whether the appellant is entitled to take a plea that the deceased Saravanan was employed by the 6th respondent as a workman or not and whether the claimants were entitled to receive the compensation or not.

13.The Deputy Commissioner of Labour has confirmed that the deceased Saravanan died while working as driller in the lorry bearing registration No. TN 33 A 1200 of the 6th respondent based on the depositions of the PW1 Manonmani, PW2 Sivakumar and RW1 Mohanasundaran who is the 5th respondent herein. Since the lorry was insured with the appellant, the appellant has been made liable to pay compensation to the 1st to 4th respondents.

14.Since the 1st to 4th respondents are the dependants of deceased Saravanan, I am of the view, the 1st to 4th respondents are permitted to withdraw the amount already deposited before the Deputy Commissioner of Labour. Liberty is given to the appellant Insurance Company to initiate appropriate proceedings to recover the amount from the 5th and 6th respondents in accordance with law uninfluenced by the observation of the impugned order passed by the Deputy Commissioner of Labour and any other observations contained herein.

15. There present Civil Miscellaneous Appeal stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation, Salem.

+1cc to Mr. R. Sivakumar, Advocate, S.R.No.102876

C.M.A.No.708 of 2012
and
M.P.No.1 of 2012

PPA (CO)
CS/13/01/2020



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