

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA.No.2421 of 2016
&
C.M.P.No.16982 of 2016

Reliance General Insurance Company
Limited,
Shri Laxmi Complex, I Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem District.

.. Appellants

-vs-

1. Saraswathi
2. Prakash
3. R. Saravana Kumar

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 82(2) of E.S.I.
Act of 1948, against the award passed in W.C.No.120 of 2011 dated
14.7.2014 on the file of the Commissioner for Workmen's
Compensation and Deputy Commissioner of Labour, Salem.

For Appellant : Mr. K. Moorthy

For Respondent : Mr.C. Thangaraju for R1 and R2
R3- served- no appearance

JUDGMENT

Aggrieved over the order passed by the Deputy Commissioner
for Labour, Salem under the Workmen's Compensation Act in
W.C.No.120 of 2011 dated 14.7.2014, the 2nd respondent Insurance

Company has preferred the appeal.

2.The facts leading to filing of present Civil Miscellaneous Appeal is as follows;

(i)The claimants are the legal heirs of deceased one Subramani. According to the claimants, the deceased Subramani was working as a driver under the 3rd respondent herein in his lorry bearing Registration No.TN-46/C-1783. The appellant is the insurer of the lorry.

(ii) On 17.07.2010, at 2.50 hours, while the deceased Subramani was on duty as a first driver in the above said vehicle, he unloaded cement in factory situate at Thadibadri, Anantapur District, Andhrapradesh and waiting for loading near Sourashtra Road Transport, where he suffered heart attack in the lorry cabin and died on 17.7.2010 at 2.50 a.m.

(iii) The deceased was earning monthly salary of Rs.9,500/- and he was paid batta of Rs.100/- per day.

(iv) On his death, the claimants laid a claim petition claiming compensation of Rs. 6 lakhs before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem in W.C.No.120 of 2011.

(v) Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem, on considering the evidence of

witnesses AW1 and 2 and exhibits Ex.P.1 to P.9 and Ex.R.1 passed an award granting compensation of Rs.4,76,952.00 along with interest at the rate of 12% from the expiry of 30 days after the date of accident till the date of realisation.

(vi) Aggrieved against the order passed by the authority, the appellant Insurance Company has preferred the present Civil Miscellaneous Appeal praying to set aside the award passed by the authority.

3. Heard Mr.K. Moorthy, learned counsel appearing for the appellant and Mr.C.Thangaraju, learned counsel appearing for the respondents 1 and 2. Though notice was served on the 3rd respondent, there is no representation on his behalf.

4. Learned counsel for the appellant Insurance Company would contend that the income pleaded by the claimant is excess and no accident had taken place during the course of employment and therefore, they are not liable to pay any compensation. The authority has found that the deceased suffered death while he was waiting for loading near Sourashtra Road Transport, Anantpur Road, Tadipatri, he suffered death due to massive heart attack while on duty. Therefore the worker is entitled to compensation for the death

occurred during the course of employment and out of the course of the employment.

5. The Appeal is admitted on the following substantial question of law;

' 1. Whether the Commissioner under Workmen's compensation Act is right in fixing the notional monthly income of the deceased at Rs.5,966/-, when the monthly income of the deceased Subramani was proved by the claimants that the deceased has earned a sum of Rs.9,500/- as monthly income along with bata at the rate of Rs.100/- per day?

2. Whether the death of the workman occurred during the resting time can be construed as the death occurred during the course of employment, particularly, when the death occurred while he was waiting for loading the cargo as defined under section 3 of the Workmen's Compensation Act?

*3. In the light of the subsequent judgments fixing the notional income even in the absence of any documentary evidence, whether this Court can fix the reasonable notional monthly income of the deceased on the basis of the decision of the Hon'ble Apex Court in **Jaya Biswal and others Vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd., and others** reported in **2016 (1) TN MAC 289 (SC)?** '*

6. The learned counsel for appellant would vehemently contend that the employer and employee relationship has not been proved. Since the vehicle was not involved in any accident, claim is not maintainable. The deceased is a stranger and he is not covered by Insurance Policy. Even assuming that he suffered death, while on duty, the cardiac arrest has no casual connection with the employment and hence the appellant is not liable to pay any compensation.

7. From the materials available on record, it is seen that the first claimant has examined herself as AW1, the spare driver and the eye witness to the incident, Senthil kumar was examined as AW2 and Exhibits A1 to A9 were marked. From the records, it is seen that the deceased had suffered death due to Myocardial infraction on 17.7.2010 while he was on duty as a driver of lorry. To controvert the evidence of AW2, neither the employer nor other employees of the lorry were examined. In the absence of any contra evidence and in the absence of a plausible reasons for the deceased in the drivers seat, unauthorisedly, it shall be construed that employment has been proved. The Lorry was driven from Tamilnadu to Maharashtra and there are probabilities of cause of death due to stress and strain. Therefore the question of law that whether the death is occurred in the course of and arising out of employment and that whether the

claimant is entitled to compensation are answered in the affirmative and since the appellant is the insurer of the vehicle, it is liable to pay the compensation.

8. The cause of death certainly has casual connection with the work of the deceased and therefore the contention of the insurance company that it does not have any casual connection with the work of the deceased and therefore the appellant is not liable to pay any compensation are not sustainable.

9. Learned counsel for the respondent submitted that Section 4 of Employees Compensation Act 1923 has been amended and sub section 1-B has been incorporated to take effect from 18.1.2010. As per the notification issued in terms of Section 4(1-B), the claimants are entitled to monthly wages at the rate of Rs.8000/-. He would also rely on the judgment of the Honourable Supreme Court reported in **2016 (1) TN MAC 289 (SC) (Jaya Biswal and others Vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. And others)**, wherein, it is held the High Court in appeal reducing the compensation awarded by the WC Commissioner from Rs.10,75,253 to Rs.6,00,000 and waived award of 50% penalty with interest at 12% per annum is not proper in the absence of any reason for such reduction. In the

absence of any evidence with regard to exact wages, WC Commissioner rightly taken into consideration the fact that the deceased was a highly skilled workman, who often used to undertake long journeys outside State as vehicle had national permit. The Apex Court accepting wages at Rs.4000/- per month and Rs.6000/- as Batta, totalling to Rs.10,000/-, arrived at Rs.10,67,850/- (Rs.10,000 x 50% x 213.57) and by adding Rs.25,000/- as funeral expenses, awarded total compensation at Rs.10,92,850/- and awarded interest at 12% per annum.

10. The Honourable Supreme Court in the above judgment has not dealt with Section 4(1B) of Employees' Compensation Act, 1923. When there is an amendment which specifically fixes the monthly wages through notifications in the official gazette, it has to be followed. The Court is bound by that mandatory provision until the said provision is declared as unconstitutional. Therefore, the monthly wages as notified as per sub clause 1B of Section 4 of the Employees' Compensation Act, 1923 has to be taken for fixation of monthly wages.

11. Government has issued a notification fixing the monthly wages at Rs.8000/- under Section 4(1-B) of the Act. Accordingly, the

salary of the deceased is fixed at Rs.8000/-. The question of law Nos.2 and 3 are answered accordingly. The compensation is re-worked as under;

$$8000 \times 50/100 \times 159.89 = \text{Rs.}6,39,560/-$$

The total compensation awarded by the Commissioner for Workmen's Compensation is enhanced from Rs.4,76,952.00 to Rs. 6,39,560/-.

12. The Insurance Company is directed to deposit the amount awarded by this Court, less the amount, if any, already deposited, to the credit of W.C.No.120 of 2011 within a period of 60 days along with interest at the rate of 12% from 30 days from the date of accident.

13. The Civil Miscellaneous Appeal is disposed of with the above modification. No costs. Consequently, the connected C.M.P.No.16982 of 2016 is closed.

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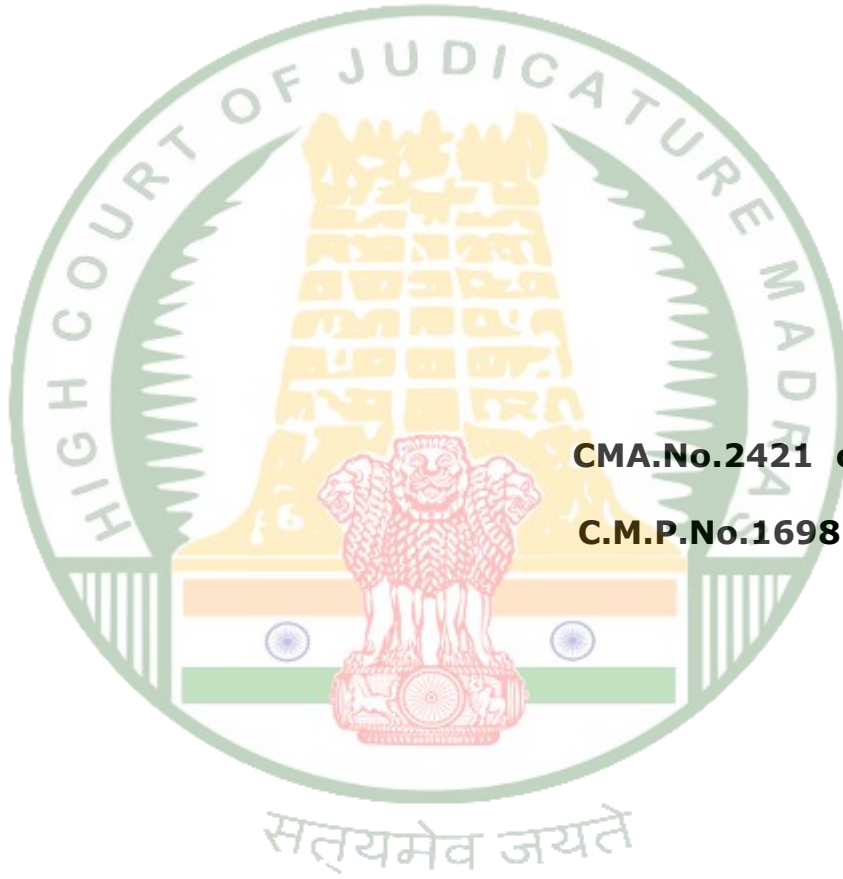
27.3.2019

msr
Index:Yes/No
Internet:Yes/No

To
The Commissioner for Workmen's
Compensation and Deputy Commissioner

of Labour, Salem.

M.GOVINDARAJ, J.
msr



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