

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2934 of 2019 and

CMP No.15563 of 2019

United India Insurance

Company Limited,
'Sillingi Building' IV Floor,
No.134, Greams Road,
Chennai - 600 006

... Appellant/II Opp. Party

Vs.

1. D.Mariyammal

2. M.Dhandapani

3. Minor Keerthika

..Respondents 1 to 3/Applicants

**(Minor Rep.by her Mother and
Next Friend Mariyammal)**

4. P.Chandra Babu

..4th Respondent/I Opp. Party

Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923 to set aside the final award dated 12.04.2019 (received on 14.05.2019) passed by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour - II), Chennai in E.C.No.319 of 2017.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance

JUDGMENT

The appellant has filed the present Civil Miscellaneous Appeal under Section 30 of the Employees Compensation Act, 1923 to set aside the final award dated 12.04.2019 passed by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour - II), Chennai in E.C.No.319 of 2017.

2. The 1st respondent is the mother, 2nd respondent is the father, 3rd respondent is the minor sister and 4th respondent is the employer of the deceased Jayakumar. The case of the respondents / claimants is that on 07.05.2017, at about 3.15 hrs, while the said Jayakumar was driving a car bearing Regn. No.TN-09-BE-8463, when the vehicle was proceeding in Pondicherry - Tindivanam National High Ways, a person had suddenly crossed the road, in order to avoid the accident, the said Jayakumar had

turned to right side, unfortunately, the above said car ran over the center median of the road and the car was capsized, on account of which, the said Jayakumar died due to grievous injuries. Further, the said Jayakumar was 19 years old at the time of accident and thereby the claimants pleaded to grant a sum of Rs.20,00,000/- as compensation.

3. Per contra, the appellant / 2nd respondent has filed a counter stating that as per FIR, one Allan along with his friends was on a tour to Pondicherry through the Car bearing registration no.TN 09 BE 8463 and the same was driven by one of the friend, viz., Jayakumar. On 07.05.2017, at 3.15 p.m., while they were returning in the same car driven by said Jayakumar in a rash and negligent manner, near Kenipattu Village on the Pondicherry-Tindivanam National High Ways, he lost his control and the vehicle turned to the other half of the road on the opposite side and capsized. Further, the counter proceeds to state that the accident had occurred only due to the rash and negligent driving of the deceased person and that they are not liable to compensate the claimants. Also, the appellant would rely on the death report of the deceased issued by the police authorities, wherein it is stated that the deceased Jayakumar had no employee employer relationship with the 4th respondent and he was studying B.Tech in Bharath University, Selaiyur at the time of accident and thereby pleaded that they are not liable to pay compensation to the claimants.

4. The court below after considering the averments and counter averments placed on either side, by taking note of FIR, Ex.P.2, Postmortem report, Ex.P.3 has observed that the deceased had died due to the injuries sustained by him at the time of driving the vehicle and there is no contradictory evidence to disprove the same. Further, it had observed that there is employee employer relationship between the deceased and 4th respondent. Further, the court below taking shelter of Ex.P.2, Postmortem certificate has concluded the age of deceased as 19 and by taking into account the evidence of P.W.1, father of the deceased stating that the deceased had earned Rs.15,000/- as salary per month and in the absence of any evidence or documents produced by the appellant to disprove the same, the court below has awarded a sum of Rs.9,05,880/- along with 12 % interest and directed the appellant / insurance company to pay same. Being aggrieved by the award passed by the court below, the appellant is before this Court with the present appeal.

5. The learned counsel for the appellant contended that the court below had tried to overcome the contention of the appellant that the deceased being a B.Tech student was not

employed by the 4th respondent, by explaining that he could have done part-time work as a driver, which was not at all the case of the respondents 1 to 3 and thereby pleaded to dismiss the appeal.

6. Earlier, on 25.07.2019, an argument was advanced by the learned counsel for the appellant before this Court stating that when the deceased was a student, he cannot be construed as an employee of the owner of the vehicle, therefore, notice was ordered to the respondents returnable in three weeks and an order of interim stay of the impugned award was also granted. In consequence, though notice to the respondents 1 and 2 were served as early on 19.08.2019 and to the 4th respondent on 22.08.2019 [the 3rd respondent is minor and represented by 1st respondent], there is no representation for the respondents either-in-person or through learned counsel.

7. Heard the learned counsel for the appellant and perused the documents placed on record.

8. It could be seen from counter filed by the appellant herein, before the court below that one Allen along with his four friends, namely, Jayakumar, Jayasankar, Deepak and Madan had gone for a tour to Pondicherry by a car bearing Registration No.TN 09 BE 8463, which was driven by one of their friend, viz., Jayakumar and on 07.05.2017, while they were returning by the same car, due to the rash and negligent manner, at 3.15 p.m., near Kenipattu Village on the Pondicherry - Tindivanam National Highways (NH 66), the said Jayakumar had lost the control and the vehicle turned to Tindivanam - Pondicherry road (Other half of the road on the opposite side) and capsized. Due to the said accident, Jayasankar, Deepak and Jayakumar sustained injuries and Madhan died on the spot and Jayakumar also succumbed to injuries on 17.05.2017 in the hospital. The appellant had stated that the deceased Jayakumar, who drove the car, is only a friend and he cannot be treated as an employee and the Insurance Company is not liable to pay any compensation.

9. From the materials on record it is clear that the said car is in the name of P.Chandrababu, Son of Pattabi. When the appellant had denied that the said Jayakumar was an employee, the 1st respondent, owner of the vehicle, who had filed counter affidavit has not appeared before the court regularly and was set exparte later.

10. The above said friends, who were travelling along with the deceased Jayakumar were not examined as witness and even the 1st respondent / owner of the vehicle was not examined. The

appellant ought to have examined the other persons, who were travelling in the vehicle to prove that the said deceased was not a driver, but only a friend. In the absence of any evidence to show that the deceased was not a driver, then, it should be presumed that the deceased person was working as driver, when claim petition was filed. There are many instances where the students are engaged in part-time job to enable them to take care of their educational expenses.

11. Apart from the above, one Allen, who had lodged a complaint, was not examined to prove that the deceased person was a student and was studying in Bharath Engineering College as a student in B.Tech course, no other material was produced to prove contra by the appellant herein. In the absence of any other evidence / materials to show that the deceased Jayakumar was only a student, who went along with his friends for picnic and was not a driver and there was no relationship, the Tribunal has rightly considered the issue and fastened the liability on the appellant. Since the vehicle involved in the accident has been insured with the appellant herein and the same is in existence from 18.10.2016 to 17.10.2017, liability of the appellant is established.

12. In view of the above said observations and directions, this Court is not inclined to interfere with the orders passed by the learned Commissioner for Employees Compensation [Joint Commissioner of Labour - II], Chennai in E.C.No.319 of 2017. Accordingly, the present Civil Miscellaneous Appeal filed by the appellant / Insurance Company is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Joint Commissioner of Labour - II, Chennai

Copy to : The Section Officer, VR Section,
Madras High Court, Chennai

+1 cc to M/s.J.Michael Visuvasam, Advocate Sr.No.95822

AKM/20.12.19/4P-4C /

C.M.A.No.2934 of 2019 and
CMP No.15563 of 2019