

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1618 of 2017
and C.M.P.Nos.8580 of 2017 and 16878 of 2018

Mr.Sathish Kumar ... Appellant / 1st Respondent

Vs.

1. Mr.M.Nehru

2. Mrs.Minna Kodikudi ... Respondents 1 & 2/Petitioners
1

3. United India Insurance Company Limited
No.139, C.G.Complex 3rd Floor,
Kumaran Road,
Kovai - 641 601. ... 3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 30(1) of the Workmen's Compensation Act 1923, to set aside the award dated 10.03.2016 passed in E.C.No.104 of 2014 by the Deputy Commissioner of Labour for Workmen's Compensation, Coimbatore, awarding a sum of Rs.4,42,740/- against the appellant is concerned.

For Petitioner: Mr.P.G.Thiyagu

For R1 & R2 : Mr.R.Nandha Kumar

For R3 : Mrs.I.Malar

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 10.03.2016 passed in E.C.No.104 of 2014 by the Deputy Commissioner of Labour for Workmen's Compensation, Coimbatore.

2. The brief facts of the case is that the first respondent is the father and the second respondent is the mother of one N.Prabhakaran (deceased). The Prabhakaran was working as a Driver under the appellant and the third respondent is the Insurer of the appellant's vehicle. On 03.05.2014 at about 02.30 a.m., when

the Prabakaran was engaged in a trip from Coimbatore to Rameswaram in the vehicle bearing Reg No.TN-39-Z-3777 belongs to the appellant, he met with an accident. Due to the impact, he sustained multiple grievous injuries all over his body and died on the spot. Immediately, he was taken to the Manamadurai Government Hospital and the doctor, who attended the Prabakaran declared his death on the same day. At the time of his death, he was aged about 22 years and he was the only breadwinner of the family. Due to his sudden death, his parents, the first and second respondents herein, lost his support and therefore, they filed a Claim Petition before the Deputy Commissioner of Labour for Workmen's Compensation, Coimbatore, claiming a sum of Rs.20,00,000/-, as compensation for the death of their son.

3. Denying the allegations, the third respondent insurance company has filed a counter affidavit and submitted that as per the terms and conditions of the insurance policy covering the vehicle involved in the accident, the policy does not cover the risk of any vehicle which was given for hire or reward. But the said vehicle bearing Reg No.TN-39-Z-3777 has been given for hire by the Insured person, who is the appellant herein, hence, they are not liable to pay any compensation to the first and second respondents/claimants. Further, there is no proof to show that the said Prabakaran had died only during the course of his employment with the appellant, and also there is no proof to show that the Prabakaran had valid driving license at the time of accident to drive the said vehicle. Moreover, the third respondent insurance company has submitted that as per the provisions under Section 134 of the Motor Vehicles Act 1988, the Insured/appellant has failed to provide necessary information in writing and has failed to submit any claim documents to them. Thus, in the instant case, there is a fundamental breach of policy conditions by the insured/appellant and willful violation of the condition that is imposed upon a contracting party (appellant) under the contract.

4. The third respondent insurance company has further submitted that the manner in which the alleged accident has been described in the FIR and that of the main application filed before the Deputy Commissioner of Labour for Workmen's Compensation, are contradictory. Hence, there is no casual connection between the alleged death of the Prabakaran on 03.05.2014 and his alleged employment with the appellant. Moreover, the third respondent insurance company has submitted that it has been learnt from the Ration Card that the deceased Prabakaran was also survived by his brother Murali and Grand Mother Thogalammal respectively, who admittedly have not been arrayed as proper and necessary parties in the instant case. In addition, the third respondent insurance company has submitted that the appellant and the claimants have not furnished any

proof to show the nature of business carried on by the appellant, its origin and date of inception, proof of day to day transactions, name and style, books of accounts, registration certificate, place of business, details of alleged customers, details of vehicles involved in alleged legal entity, duty hours, number of persons involved in the business, details of workers, wage details and details of all statutory returns. Hence, for the reasons stated supra, the question of liability of the insurance company, does not arise and the claimants will have to redress their grievance and exhaust their remedy only against the appellant, who involved in the instant case for alleged compensation.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded the compensation for a sum of Rs.8,85,480/- to be paid by the appellant and the third respondent insurance company jointly or severally. Aggrieved by the award, the appellant has preferred this appeal raising the following substantial questions of law :

'1. Whether the competent authority has interpreted the accident as arising out of and in course of employment, wherein the vehicle involved in the personal trip of the petitioner/1st respondent.

2. Whether the competent authority is proper in defining the constitution or joint liability against the appellant wherein the insurance is in proper mode?

3. Whether the competent authority applied the notion of carriage vehicle, when the vehicle registered for personal use and such trip is a personal trip consisting of family members?'

6. Heard the learned counsel on either side and perused the documents placed on record.

7. From the perusal of the materials on record, it is seen that the parties who had travelled in Tavera Car bearing registration No. TN 39 Z 3777 was hired by seven persons to travel to Rameshwaram from Coimbatore and one Prabakaran, was engaged as a driver. The said vehicle had met with the accident due to the worse condition of the roads near Madurai Mandapam Highway and the person, who was driving the car, viz., Prabhakaran sustained injuries and succumbed to death.

8. On perusal of the FIR, it is seen that on 2.5.2014, while the said persons were travelling to Rameshwaram temple in

the car belonging to the appellant, driven by one Prabakaran, the said car had met with an accident due to the rash and negligent driving of the driver, viz., Prabakaran, on account of which, the said Prabakaran had died and many persons have sustained injuries. It is clear that the accident had occurred due to the rash and negligent driving of the said driver, Prabhakaran.

9. From the postmortem report, it is seen that the deceased was aged about 22 years old at the time of the accident. Moreover, no documents were produced to show that he was earning a sum of Rs.10,000/- per month plus Rs.100/- as daily batta. However, the salary receipt produced by the claimants was accepted by the Tribunal and has calculated the salary as Rs.8,000/- per month and has awarded a sum of Rs.8,85,480/- and Rs.5,000/- towards funeral expenses, thereby awarded a sum of Rs.8,90,480/- From the same, it is clear that the said person was working as driver in the said company, owned by the appellant and the accident had occurred during the course of the employment. The relationship between the owner of the vehicle and the deceased person was not denied and it is proved that he is a workman.

10. With regard to the liability, the court below has rightly held that the appellant and the Insurance Company are jointly or severally liable to compensate the claimants, because of the fact that the appellant, who is the owner of the transport company, namely, Bala Vinayaga Transport was owning five eicher lorries and one tavera car and he was running a transport business and accordingly, he has let the tavera car for hire and the deceased Prabakaran was employed as a driver in the appellant company. Apart from that, from the evidences it is seen that P.W.3, [one of the passenger in the vehicle] is the relative of P.W.2, appellant herein.

11. It is also seen that the appellant herein had not appeared before the Tribunal, inspite of vakalat being filed through an advocate. The statement of the said appellant that he had the insurance policy covering the accident, hence he has chosen not to appear before the Court, does not sound correct. The appellant has also stated that he appeared as a witness to give evidence instead of contesting his case solely based on the context that the same has been covered by the insurance policy. Even though it was submitted before the Tribunal that the said vehicle was taken on hire, the same was not refuted by the appellant that he has not given the vehicle for hire and that his relatives have taken the vehicle for trip, his statement, as witness, has created doubts in the minds of the tribunal, as if on collusion, the appellant has come up and given the evidence.

12. The Insurance Policy has been marked as exhibit on the side of the 3rd respondent / Insurance Company. In the said insurance policy, it has been mentioned that permitting the vehicle for hire is barred. Even though the appellant was the respondent before the Tribunal, he has not chosen to appear and defend his case, but has given the evidence only as witness and the same has not been accepted by the court below. However, the relationship of the said parties were not proved beyond doubts.

13. Further, when a question was posed to P.W.3, Gowtham, [who had lodged FIR about the accident] during cross examination as to why the name of the father of the appellant was not mentioned in the FIR, a evasive reply was given by him that since appellant's father was not injured, his name has not been mentioned in the FIR, is creating a doubt in the minds of this Court.

14. Further, it is the stand of the insurance company that even assuming there was no violation of policy, the vehicle was overloaded exceeding the number of passenger allowed and due to that also, toppling of car would have happened and the Insurance company is not liable. Also, even if the evidence given by the appellant is taken into account, it does not throw any light on the aspect whether the vehicle was sent on hire or for personal use and therefore, the evidence of the appellant that his parents and relatives went to Rameshwaram was rightly considered by the court below. The said Insurance Policy covers death of a person, who works as a driver of the insured car and he is entitled to be compensated. Hence award passed by the court below does not require any interference in the hands of this Court.

In view of the above, the substantial questions of Law raised by the appellant are answered against him and the award dated 10.03.2016 passed in E.C.No.104 of 2014 by the Deputy Commissioner of Labour for Workmen's Compensation, Coimbatore, for a sum of Rs.8,90,480/- to be paid by the appellant and the insurance company jointly or severally to the claimants is confirmed by this Court. The claimants are entitled to withdraw their respective shares.

In fine, the present C.M.A.No.1618 of 2017 is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner of Labour for Workmen's Compensation,
Coimbatore.

Copy to

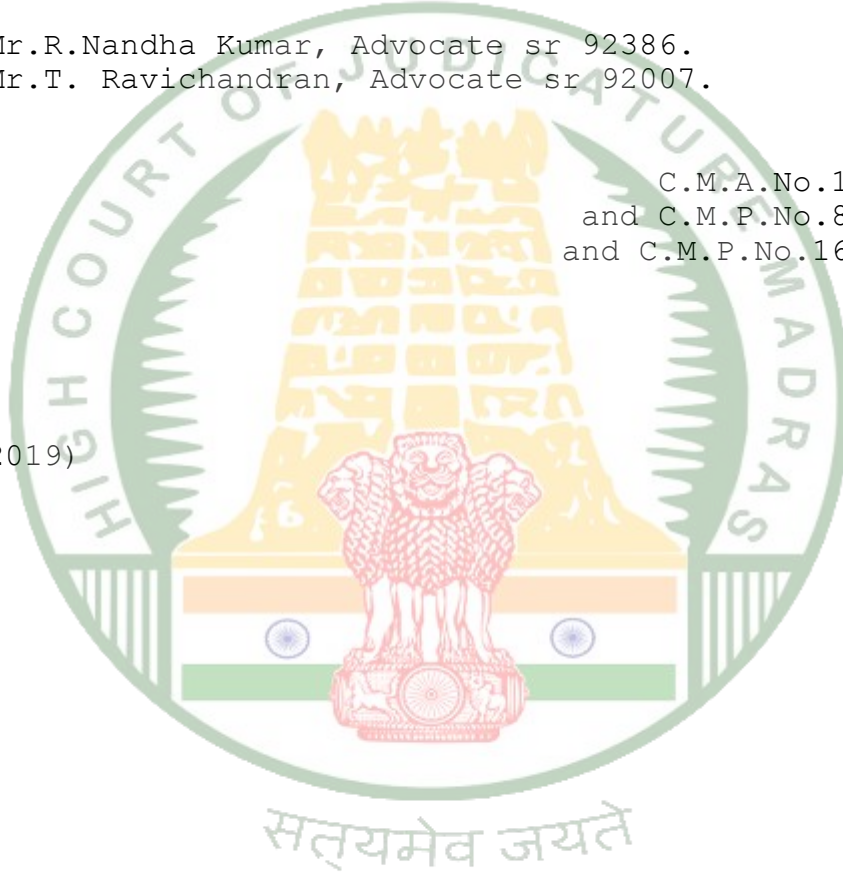
The Section Officer,
VR Section,
Madras High Court,
Chennai

+1 CC to Mr.R.Nandha Kumar, Advocate sr 92386.

+1 CC to Mr.T. Ravichandran, Advocate sr 92007.

C.M.A.No.1618 of 2017
and C.M.P.No.8580 of 2017
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BS (CO)
SP (02/12/2019)



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