

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.12.2018

Delivered on : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1967 of 2017

1.Kannammal

2.Praveenkumar

Ammani Ammal (died)

.. Appellants

Vs.

1.N.Balasubramanian

2.M/s.Royal Sundaram Alliance General
Insurance Company Limited,

4-A, 4th Floor, Thirumalai Towers, No.723,
Avinashi Main Road,
Coimbatore - 18.

... Respondents

(Cause title accepted vide order of Court
dated 23.03.2015 made in MP.No.1/15
in CMA.SR.No.22455 of 2015)

Civil Miscellaneous Appeal filed under Section 30 of
W.C. Act, 1923, against the order of dismissal dated
30.03.2013 made in W.C.No.333 of 2009 on the file of Deputy
Commissioner of Labour, Salem.

For Appellants : Mr.Ma.Pa.Thanagavel

For Respondents : Mr.M.Krishnamoorthy
(for R2)

No Appearance (for R1)

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JUDGMENT

The appellants are the applicants, who are the widowed wife and son of the deceased employee namely Rajendiran, filed this Civil Miscellaneous Appeal against the dismissal Order passed in W.C.No.333 of 2009 dated 30.03.2013 by the Deputy Commissioner of Labour, Salem.

2.The deceased Rajendiran was 48 years old and he was employed as a driver in a Lorry bearing Registration No. KA-01-AD-2499 belonging to the first opposite party/first respondent on a monthly salary of Rs.5,000/-. On 15.05.2009, the deceased went to Mangasuli Village, Athani Taluk, Karnataka State from Salem District to deliver the Coconuts, he reached on 21.05.2009 at about 05.30 PM due to non availability of workers to unload the goods, he stayed there, on next day (i.e) 22.05.2009 the workers are un loadings the goods, at that time about 11.30 AM due to the stress and strain and work pressure, the deceased became ill and suddenly sustain the chest pain and he was taken to Dr. Yuvaraja A.Patil Hospital at Mangasuli and where he was declared dead. The learned counsel for appellants states that the said accident took place during the course of employment and the applicants /claimants are entitled to claim compensation from the second respondent/Insurance Company, being the insurer of the offending vehicle.

3.The Deputy Commissioner, Labour Commissioner at Salem, after considering the case, dismissed the entire claim application on the ground that there is no evidence to show that the death occurred during course of employment and died due to stress and strain and work pressure and also non-production of medical record by the applicants.

4.I heard Mr.Ma.Pa.Thangavel, learned counsel for the appellants and Mr.M.Krishnamoorthy, learned counsel for the 2nd respondent and perused the entire materials available on record. No representation on behalf of the 1st respondent.

5.This court while admitting the appeal on 13.07.2017 framed the following substantial questions of law arise for consideration in this appeal:

(i) Whether the conclusion of the Commissioner, workmen compensation that the deceased was not a workmen as defined under the workmen compensation Act, despite the evidence of RW-1 is justified?

And up on hearing the counsel for either parties this court deem fits to frame additional Substantial Question Law as follows:

(ii) Whether the commissioner is correct in dismissing the entire claim application mere for non-production of the medical treatment records?

6.The learned counsel for the appellants states that, it is not in dispute that the deceased was employed with the first respondent and that the accident occurred during the course of employment. Moreover the 1st respondent/employer also let evidence as RW-1 and he also admit the employer-employee relationship with the deceased and also he admits that the deceased alone took the vehicle from Tamil Nadu to Karnataka State and no other alternate driver was available and this itself would go to show that the deceased had driven the vehicle continuously from Tamil Nadu to Karnataka for Un-loading the goods and because of that, he became ill and died. Moreover the Postmortem report Ex-P10, it is stated that cause of death is due to Sudden Cardio Respiratory arrest due to severe myo cardial infraction is a cause of death". Therefore, the Workmen's Compensation Commissioner cannot expect more evidence in this regard and moreover he also relied upon un-reported judgment of this Court in CMA.No.750 OF 2015 dated 02.03.2018 and prays for set aside award and seeking for compensation.

7.The learned counsel for the 2nd respondent insurance company contend that the deceased reached to the delivery spot even on 21.05.2009 at about 05.30 PM , but there is no materials produced that for non availability of workers , the deceased stayed there and on next day (i.e) 22.05.2009 and became ill and suddenly sustain the chest pain and died. Hence there is no material produced to prove that the deceased was in the course of employment and moreover the applicants failed to produce medical records of Dr.Yuvaraja A.Patil Hospital at Mangasuli. Hence the order of Commissioner is correct and prays dismissal of appeal

8.On perusal of the records and evidence of PW-1, Ex.P-1, FIR and Ex.P-2 translation of FIR and evidence of RW-1/Employer it shows that the deceased was employed with the first respondent and that the accident occurred during the course of employment and also let evidence and admit the employer-employee relationship with the deceased and also the employer admits that the deceased alone drive the vehicle from Tamil Nadu to Karnataka State and no other alternate driver was available, and from the evidence of RW-1 shows that the deceased had driven the vehicle continuously from Tamil Nadu to Karnataka for un-loading the goods and because of that only, he became ill and died. Moreover the Postmortem report Ex-P10, it is stated that cause of death is due to Sudden Cardio Respiratory arrest due to severe myo cardial infraction is a cause of death". The counsel relied the un reported judgments supra, in that case also, the same set of facts this Court set aside

dismissal award passed by the Commissioner award and held that the

"Therefore, the Workmen's Compensation Commissioner cannot expect direct evidence in this regard and it has to be culled out from the circumstances. Moreover, the death had occurred not within the State and the 1st appellant, who is an uneducated lady, would not have been in a position to look for all those documents and file the claim before the Workmen's Compensation Commissioner. Her main aim would have been only to bring the body of her husband and therefore, the direct evidence, as expected by the Workmen's Compensation Commissioner is not possible. Moreover, the Law of Evidence is not strictly applicable to the proceedings before the Workmen's Compensation Commissioner as it is only a summary proceedings. Therefore, the evidence produced by the appellants are enough to conclude that the deceased died due to strain and pressure caused due to work."

In paramount Consideration of the facts and circumstances case and evidence let by the appellants and respondent-1/Employer, moreover the duty of the driver is to un-load the goods and to reach the place of the employer after un loading the goods and by applying the principle of 'Doctrine of Notional Extension of the Employment" this court hold that the deceased died due to Stress and strain caused due to work pressure, and the dismissal order passed by the Labour commissioner Salem in W.C.No.333 of 2009 dated 30.03.2013 is hereby set aside and held that death occurred during course of employment and the 2na respondent insurance company liable to pay compensation. Hence both question of laws answered infavour of the appellants.

9.Then next to arrive quantum of compensation. In so far as quantum is concerned the learned counsel for the appellants submits that the deceased was working as driver and earned Rs.5,000/- p.m. including batta as per pleadings , but he argued that batta of Rs.100/- per day given separately but admittedly no documents was produced. However he relied Judgment of the Hon'ble Apex Court reported in 2016 (1) TNMAC 289- Jaya Biswal And Others -Vs- Branch Manager, Iffco Tokio General Insurance Company Ltd. And Others, Para 23 it held as follows:

"23. Since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time

of the accident, to arrive at the amount of wages, the learned Commissioner took into consideration the fact that the deceased was a highly skilled workman and would often be required to undertake long journeys outside the state in the line of duty, especially considering the fact that the vehicle in question had a registered National Route Permit. The wages of the deceased were accepted as Rs. 4,000/- per month + daily bhatta of Rs. 6,000/- per month, which amounts to a total of Rs. 10,000/-. The High Court did not give any reason on which basis it interfered with the finding recorded by the Commissioner on the aspect of monthly wages earned by the deceased. The impugned judgment does not even mention what according to the High Court, the wages of the deceased were at the time of the accident. Such an unnecessary interference on part of the High Court was absolutely uncalled for, especially in light of the fact that the Appellant Nos. 1 and 2 are old and have lost their elder son and they have become destitutes. Further, under the Payment of Wages Act, 1936, the onus is on the employer to maintain the register and records of wages, Section 13A of which reads as under:

13-A. Maintenance of registers and records-

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

From a perusal of the aforementioned section it becomes clear that the onus to maintain the wage roll was on the employer, i.e. Respondent No. 2. Since in the instant case, the employer has failed in his duty to maintain the proper records of wages of the deceased, the Appellants cannot be made to suffer for it."

10.The learned counsel appearing for the Insurance Company pointed out that there pleading itself is only Rs. 5,000/- including batta, hence adding batta separately is unwarranted and without any evidence.

11.Hence by considering facts and pleadings of the appellants this Court is inclined to fix the income at Rs.5,000/- p.m. including batta and the age of deceased is 48 years and relevant factor is 163.07, thus Loss of income worked as $[Rs.5,000 \times 50/100 \times 163.07 = Rs.4,07,675/-]$ is awarded as compensation to the claimants. In so far as the funeral expenses is concerned by considering judgment supra and other aspects this court award a sum of Rs.25,000/-. Hence, this court award a sum of Rs.4,32,675/- which is payable to the appellants/applicants by the Insurance Company.

12.In consequence to the quantum arrived above, it is need less to held that interest portion is concerned, as per the recent decision of the Apex court reported in CDJ 2018 SC 112 (North East Karnataka Road Transport Corporation -VS- Sujatha), it is held that the appellants are entitled for interest at the rate of 12% from the date of accident.

13.From the judgment of apex court the legal position is now clear and this court also inclined to held that appellants are entitled for interest at the rate of 12% from the date of accident (i.e) from 22.05.2009, similarly the third question is answered in favour of the appellants.

14.Thus, appeal is partly allowed. No costs.

15.The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount now awarded together with interest at 12% p.a. thereon from the date of accident, within a period of six weeks from the date of receipt of copy of this order. On such deposit being made, the commissioner is directed to disburse amount by fourth with to the applicants.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour),
Salem.

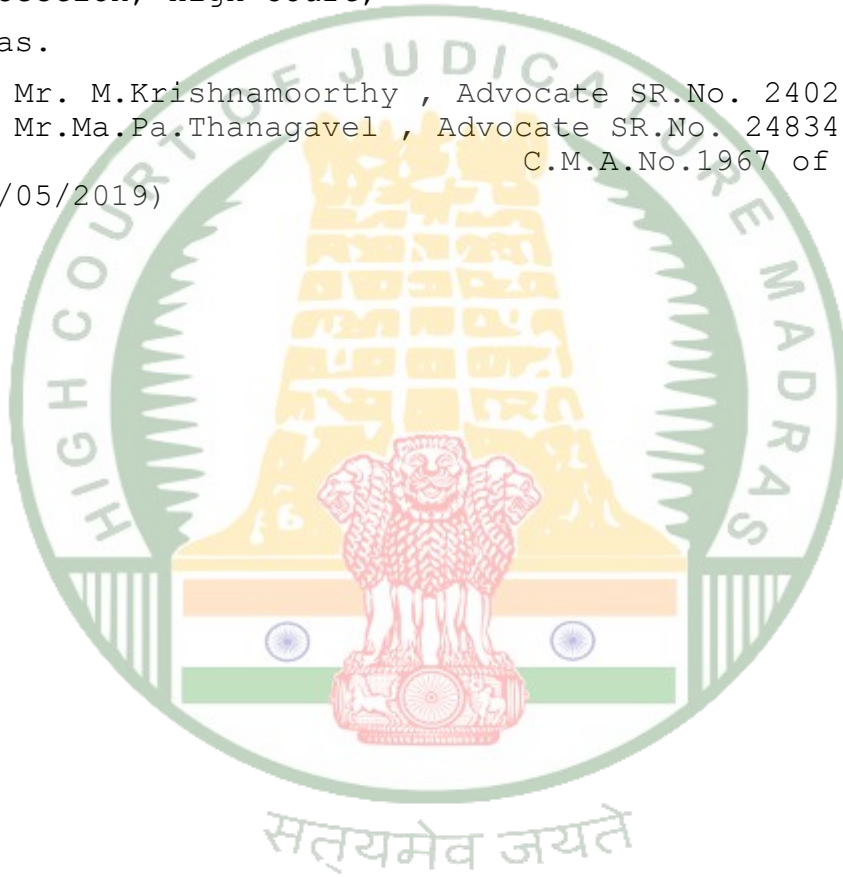
2.The Section Officer,
V.R.Section, High Court,
Madras.

+lcc to Mr. M.Krishnamoorthy , Advocate SR.No. 24020

+lcc to Mr.Ma.Pa.Thanagavel , Advocate SR.No. 24834

C.M.A.No.1967 of 2017

A.SK(27/05/2019)



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