

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.222 of 2017 and
CMP.No.1465 of 2017

The New India Assurance Company Limited,
Mac Millan Home, 'B' Block, 2nd Floor,
Pattullos Road, Chennai-600 002. ... Appellant

vs.

1. Ashwini

2. Minor Rajanandhini
(Minor represented by her mother
Mrs.Ashwini, 1st petitioner herein)

3. Managing Director,
M/s.Omni Agate System (P) Limited,
No.99, Greams Road, II Floor,
M.N. Complex, Thousand Lights,
Chennai-600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923 against the order dated 19.07.2016 passed in E.C.No.93 of 2014 by the learned Commissioner for Employees Compensation-I (Deputy Commissioner of Labour-I) at Chennai.

For Appellant : Mr.C.Ramesh Babu
For respondents : Mr.M.Selvaraj
1 and 2

...

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order dated 19.07.2016 passed in E.C.No.93 of 2014 by the learned Commissioner for Employees Compensation-I (Deputy Commissioner of Labour-I) at Chennai, awarding a sum of Rs.8,52,160/- with interest @ 12% p.a. in favour of the claimants who are wife and minor child of the deceased employee/respondents 1 and 2 herein.

2. The case of the appellant in brief is as follows:

The husband of the 1st respondent herein, namely, G.Rajendran Reddy, was working as a Senior Manager under

the 3rd respondent herein, namely, M/s.Omni Agate System (P) Limited in their Gulbargah Project and he was usually enjoying Sunday Holiday. While so, on 19.05.2013 at about 10.30 p.m. (night), while he was driving Motorcycle Vehicle No.KA-36-W-5527 on Sindhanoor Raichur Main Road, an unknown vehicle driver came with rash speed and negligently dashed against the deceased vehicle, as a result, he died on the spot. According to the appellant, since 19.05.2013 was a Sunday Holiday, admittedly, the deceased died not during the course of his employment. Ignoring the said fact that 19.5.2013 was a Sunday and holiday for the deceased employee, the learned Commissioner has wrongly passed the award thereby awarding a sum of Rs.8,52,160/- with interest @ 12% p.a. in favour of the claimants to be payable by the appellant Insurance Company herein. Aggrieved with the same, the present Civil Miscellaneous Appeal has been filed by the Appellant Insurance Company.

3. This Court by order dated 10.02.2017, while admitting the Civil Miscellaneous Appeal has framed the following Substantial Question of Law:

'Whether the death of G.Rajendra Reddy was neither in the course of his employment nor out of employment to pay compensation.'

4. Learned Counsel appearing for the Appellant Insurance Company specifically contended that the deceased not died during the course of his employment, but died due to a road accident on Sunday Holiday. Therefore, no claim is maintainable before the Authority. Further, the deceased was not covered under Section 4(1-B) of the Employee's Compensation Act, 1923, since there was no any employer and employee relationship between the deceased and the 3rd respondent herein at the time of accident. But the learned Commissioner overlooking the said vital and crucial aspect has awarded the compensation since the deceased died leaving behind his wife and minor child. Therefore, the same has to be set aside.

5. Replying to the above contention, the learned Counsel appearing for the respondents 1 and 2 drawing the notice of this Court to the evidences placed before the learned Commissioner on their side that on 19.05.2013 at about 20.30 hours, the deceased was driving his Motorcycle vehicle after going out from the place of employment. Since 20 employees were engaged in digging of earth, cable laying and erection and installation of transformers with attached meters thereby auditing the electric consumption of the locality, the learned Commissioner, after accepting the evidence placed on behalf of the claimants that the deceased after attending the Sunday work allotted to several other persons while

returning from hotel after taking the night meals, he met with an accident and died on the spot in view of the rash and negligent driving by unknown driver of another vehicle, has awarded a compensation of Rs.8,52,160/- with interest @ 12% p.a. As there was no any contra evidence produced by both the Insurance Company and the 3rd respondent herein before the Commissioner, it is not open to maintain the present Appeal for a simple reason that the question of law raised cannot be construed as a substantial question of law.

6. I also find merit on the submission of the learned Counsel for the respondents 1 and 2.

7. Admittedly, it is not in dispute that the deceased was an employee under the 3rd respondent, namely, M/s.Omni Agate System (P) Limited. While he was working along with 19 other employees carrying on the work of digging of earth, cable laying and erection and installation of transformers in their Gulbargah Project, he died at 20.30 hours on 19.05.2013 which was also a Sunday. When the witnesses produced on the side of the claimants clearly spoke that after completing the night work, while returning home at about 10.30 p.m. on 19.05.2013, the accident took place, the said vital aspect has been rightly considered by the Commissioner, who in turn, awarded the compensation by taking into account the age of the deceased as 28, the age factor 211.79 and his monthly income at Rs.8,000/- since the policy taken by the employer 3rd respondent covers to the limited extent of Rs.8,000/-as follows: $50/100 \times 8000 \times 211.79$ which comes to Rs.8,52,160/- and directed the appellant to deposit the award amount within a period of 30 days from the date of receipt of a copy of that award, failing which, directed to pay interest at the rate of 12% after 30 days from the date of accident. This Court is not able to find any infirmity in the award passed by the learned Commissioner. Accordingly, the substantial question of law is answered against the appellant Insurance Company.

8. At this stage, the learned Counsel for the appellant contended that the entire award amount except interest has already been deposited. But the respondents 1 and 2 claim interest from the date of accident itself, which is impermissible as per law.

9. This issue in respect of interest is no longer res integra. It has already been considered and decided by this Court by following the two decisions, one decided by the Apex Court in the case of Pratap Narain Singh Deo v. Srinivas Sabata and another, (1976) 1 SCC 289 and another decided by the Hon'ble Division Bench of this Court in the case of N.Ganesan v. Thilagavathi and

others, 2010 (2) TN MAC 80 (DB). The Larger Bench of the Apex Court, way back in the year 1976, has held that the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. In the light of the well settled legal position, it is made clear that the interest on the compensation amount would accrue thirty days after the date of accident and not from the date of quantification/orders passed by the Commissioner for Employees Compensation. In fact, while considering a similar issue in C.M.A.No.2733 of 2015 dated 30.11.2015 (Ravichandran v. Sadiq Hussain and others), I have also held that the interest at the rate of 12% per annum on the compensation shall accrue after thirty days from the date of accident until the date of deposit.

10. Following the above settled legal position, this Court hereby directs the appellant Insurance company to deposit the interest at the rate of 12% per annum on the compensation awarded to the respondents 1 and 2/claimants 1 and 2 after thirty days from the date of accident till the date of deposit, to the credit of the E.C.No.93 of 2014 on the file of the learned Commissioner for Employees Compensation-I (Deputy Commissioner of Labour-I) at Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the 1st respondent/1st claimant to withdraw the entire compensation amount payable to her along with accrued interest (deducting the amount already withdrawn by her, if any). Insofar as the compensation amount payable to the 2nd respondent-minor claimant is concerned, the same shall be invested in a Nationalised Bank, till she attains majority. Further, the 1st respondent/1st claimant is permitted to withdraw the periodical interest on the minor's share of compensation once in six months directly from the Bank.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner for Employees Compensation-I (Deputy Commissioner of Labour-I) at Chennai.

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

+2ccs to Mr.M.Selvaraj , Advocate SR.No. 60358

+1cc to Mr.C.Ramesh , Advocate SR.No. 60139

C.M.A.No.222 of 2017

A.SK(29/08/2019)