



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2019

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A(MD) .No.585 of 2016****and****C.M.P. (MD) .No.6727 of 2016**

The Divisional Manager,
M/s.National Insurance Company Limited,
7a, North Veli Street,
Madurai - 1.

... Appellant/
2nd respondent

Vs.

Ayyamperumal (died)

1.Kaliammal

2.A.Pothi

3.A.Athiraja

.. Respondents 1 to 3/
Petitioners

4.V.Chandra

... 4th respondent /
1st respondent

(This appeal is dismissed in respect of 4th respondent, as per the order of this Court dated 27.06.2018)

PRAYER:- Appeal filed under Section 30 of the Workmen's Compensation Act, against the award, dated 14.05.2016, passed in W.C.No.129 of 2012 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour), Madurai.

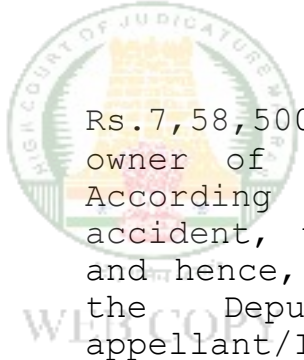
For appellant : Mr.D.Rajkumar

For respondents 1 to 3 : Mr.K.Kumaravel

JUDGMENT

Heard the learned counsel appearing for the appellant / Insurance Company and the learned counsel appearing for the respondents 1 to 3 / claimants.

2. It is a case of fatal. One Hariraman, who is the son of the first respondent and brother of the respondents 2 and 3 herein, while travelling as a cleaner in the 4th respondent's lorry bearing Registration No.KA-01-C-9229, died due to an accident on 02.02.2012. The claimants filed claim petition in W.C.No.129 of 2012 claiming



Rs.7,58,500/- as compensation. The 4th respondent herein, who is the owner of the lorry, remained *ex parte* before the Court below. According to the appellant/Insurance Company, at the time of the accident, the deceased drove the lorry without any valid license and hence, they are not liable to pay compensation. After trial, the Deputy Commissioner of Labour has directed the appellant/Insurance Company to pay a sum of Rs.6,75,320/- as compensation to the claimants. Now, this appeal has been filed by the appellant / Insurance Company questioning the liability.

3. This appeal was admitted on the following substantial questions of law:

"(i) Whether the learned Commissioner is justified in holding that the deceased employed as cleaner, who had driven the insured vehicle had travelled in his capacity as cleaner of the insured vehicle?

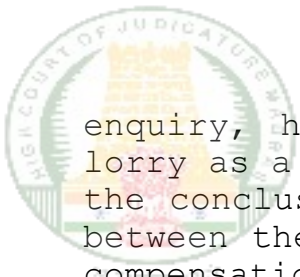
(ii) Whether the learned Commissioner is justified in findings that the accident took place in the course of employment, when it is proved that the deceased had driven the insured goods vehicle and when it was alleged by the claimants that the deceased was employed as cleaner in the insured vehicle?

(iii) Whether the learned Commissioner is justified in fastening the liability on the Insurance Company when it is pleaded and established that the deceased who is not the driver had driven the vehicle was not possessed of due valid and effective driving licence to drive such a type of vehicle at the material time of accident?

(iv) Whether the learned Commissioner is justified in fastening the liability on the appellant Insurance Company without ordering recovery from the employer of the deceased?

4. The main contention of the learned counsel for the appellant/Insurance company is that at the time of the accident, the deceased, who was stated to be travelled as cleaner, had driven the vehicle without any valid license and therefore, they are not liable to pay the compensation.

5. According to the claimants, the deceased was working as cleaner in the lorry owned by the 4th respondent herein and he has been earning a sum of Rs.6,000/- p.m. and batta of Rs.50/- per day. In support of the said contentions, the claimants have produced Exs.P1 to P11. Though the appellant disputed the employer and employee relationship of the deceased and the 4th respondent herein, the appellant has not produced any document in support of the same. The 4th respondent remained as *ex parte* before the Commissioner. More over, RW2 himself admitted in his sworn affidavit that on



enquiry, he came to know that the deceased had travelled in the lorry as a cleaner. Based on the same, the Commissioner has come to the conclusion that there was an employer and employee relationship between the deceased and the 4th respondent herein and arrived at a compensation of Rs.6,75,320/-. As the policy was in force, the Commissioner directed the appellant to pay the entire compensation to the claimants.

6. Admittedly, there is no oral and documentary evidence produced on the side of the appellant/Insurance Company substantiating their contention that at the time of the accident, the deceased had driven the lorry in question. Only based on the investigation report - Ex.D2 prepared by DW1 to the effect that the deceased, in fact, travelled in the lorry as cleaner and that just before the accident, the deceased requested the driver by name Sundaramoorthy to allow him to drive the vehicle and accordingly, he permitted him to drive the vehicle, which caused the accident, the appellant/Insurance Company has been contending that as the deceased had driven the vehicle at the time of the accident without any valid license and in violation of policy condition, they are not liable to pay the compensation. Merely based on the report of the officials of the appellant and the evidence of the officials of the appellant, without any valid proof and the evidence of independent witness, this Court cannot come to a conclusion that the accident had occurred as stated by the appellant. When the alleged violation of policy condition is not proved, the question of ordering recovery from the employer does not arise. All the questions of law are answered against the appellant. This Court does not find any reason to interfere with findings of the Commissioner.

7. In view of the above, this Civil Miscellaneous Appeal is dismissed. It is represented that the entire award amount has already been deposited. Hence, the claimants are permitted to withdraw the entire award amount with accrued interest and costs. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

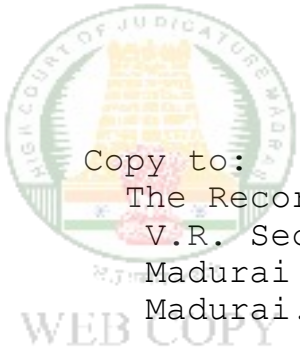
Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

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



Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 cc Mr.K.KUMARAVEL ,Advocate, SR.No. 71219
+1 cc Mr.D.RAJKUMAR ,Advocate, SR.No. 71745

C.M.A(MD) .No.585 of 2016
25.06.2019

GCG
KK/SAR/24.07.2019/4P-6C