

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.M.A.No.3449 of 2009

and M.P.No.1 of 2009

G.V.Vishwanathan

... Appellant

Vs.

1.Selvi

2.Minor Jeeva

3.Minor Poovika

4.Kaliammal

5.The Branch Manager,

New India Assurance Company Ltd.,

No.12, New Hospital Road,

Gobichettipalayam Post,

Erode, District.

... Respondents

(R2 & R3 are minors and rep by their mother 1st respondent)

Appeal filed under Section 30 of the Workmen's Compensation Act, 1925, against the order dated 03.04.2009 made in W.C.No.522 of 2005 on the file of the Commission for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

For Appellant : Mr.R.Marudhachalamoorthy

For Respondents : Mr.M.Nandhakumar

for Mr.S.Ramesh Kumar (R1 to R3)

R4 & R5 - no appearance

ORDER

Challenging the Award passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem in W.C.No.522 of 2005, the employer has filed the above appeal.

2.The respondents 1 to 4 filed W.C.No.522 of 2005 claiming a total compensation of Rs.10,10,000/- together with interest and costs of Rs.5,000/- for the death of one Subramaniam in the course of employment.

3.It is not in dispute that the appellant is the employer and the insurer was also impleaded as the 2nd respondent in W.C.No.522 of 2005. At the time of accident, the deceased was aged 32 years and was earning a sum of Rs.4,000/- per month, including all allowances. The Workmen's Commissioner took into consideration the basic salary of the deceased at Rs.1,980/-

and awarded a total compensation of Rs.2,01,812/-. Out of the total Award, the Commissioner fastened the liability on the Insurance Company to the tune of Rs.91,733/- and directed the employer to pay the balance sum of Rs.1,10,079/- to the claimants. Challenging this Award, the employer has filed the above appeal.

4.It is the contention of the appellant that the Commissioner should have fastened the entire liability on the Insurance Company and not on the employer. While fastening the liability to the tune of Rs.91,733/- on the Insurance Company, the Commissioner observed that on 01.12.2004, the deceased's salary was fixed at Rs.30/- per day and insurance policy was taken for the said amount. Therefore, the Insurance Company is liable only for the policy amount and not more than the same. The Commissioner fixed the salary of the deceased at Rs.66/- per day, whereas the insurance policy was taken for a sum of Rs.30/- per day. Therefore, the Commissioner has rightly fastened the liability on the Insurance Company only to the tune of Rs.91,733/- and directed the employer to pay the balance amount of Rs.1,10,079/-. As rightly observed by the Workmen's Commissioner, Salem, the Insurance Company cannot be made to pay over and above the insured amount.

5.In these circumstances, I do not find any error or irregularity in the order passed by the Workmen's Commissioner, Salem. The appeal is devoid of merits and the same is dismissed. The claimants are permitted to withdraw the compensation amount deposited by the employer as well as the 5th respondent. No costs. Consequently, the connected miscellaneous petition is closed.

va

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

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

+lcc to Mr.M.Guruprasad, Advocate SR.No.19880

+lcc to Mr.S.Ramesh Kumar, Advocate SR.No.19564

C.M.A.No.3449 of 2009
and M.P.No.1 of 2009

(CO)

mst (28/05/2020)

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