

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.NO.450 OF 2020

Vijayalaksmi

... Appellant

-vs-

1. Solaimuthu

2. The New India Assurance Company Limited,
No.29, Ram Complex,
2nd Floor, Paramathi Road,
Namakkal, Namakkal-637 001.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act 1923 against the order dated 16.12.2019 in E.C. No.144/2018 passed by the Commissioner for Employees Compensation, Coonoor.

For Appellant : Mr.R.Nalliyappan

For Respondents: R1 - No appearance

Mr.J.Michael Visuvasam for R2

JUDGMENT

This appeal has been filed by the appellant against the order dated 16.12.2019 passed by the Commissioner for Employees Compensation, Coonoor in E.C. No.144/2018 refusing to grant her prayer for payment of compensation.

2.The appeal arises the following substantial questions of law:

'a)Whether the Award of the Commissioner for employees compensation in rejecting the claim of the appellant by holding that death due to Pulmonary Thromboembolism is not the outcome of the employment?

b)Whether driving is one of the risk factor for Pulmonary Thromboembolism or not?

c)Whether learned Commissioner is correct in rejecting the claim by holding that the death was not occurred due to employment despite of the admitted fact that he was fell ill and died during the course of employment?

3.Mr.R.Nalliyappan, learned counsel appearing for the appellant would submit that on 25.12.2016 at about 8.00 a.m., while the deceased Srinivasan was working as a Driver at Miraj Rural Police Limit, Sangli District, Maharashtra State, suffered from severe chest pain and headache and he was taken to the Natural Hospital for first aid and then he was shifted to Civil Hospital, Miraj and on check up by the Duty Doctor, he was declared dead. Learned counsel for the appellant would further submit that since the deceased died during the course of the employment, the appellant, who was the second wife of the deceased, filed a petition under Section 10 of the Workmen's Compensation Act claiming compensation before the Commissioner for Employees Compensation, Coonoor. But the same was wrongly dismissed on the ground that 'Pulmonary Thromboembolism' is the cause of death of the deceased. Continuing his argument, learned counsel for the appellant would submit that when the Post Mortem Certificate No.683/2016 dated 25.12.2016 issued by the Miraj, Government Medical College Hospital shows that the deceased died due to pulmonary thromboembolism only during the course of his employment, the Commissioner has wrongly proceeded and dismissed the claim petition filed by the appellant. Therefore, the order passed by the Commissioner is liable to be set aside.

4.Mr.J.Michael Visuvasam, learned counsel for the Insurance Company, opposing the above prayer and supporting the impugned order, submitted that when the appellant claims to be the second wife of the deceased Srinivasan, she is duty bound to produce the legal heir ship certificate or the decree granting divorce between her husband and the first wife by the competent Court. Since the same have not been produced by her, the claim cannot be entertained. Referring to Section 2(1)(d) of the Workmen's Compensation Act which defines the term 'dependent' as under:

'Section 2(1)(d) 'dependent' means any of the following relatives of a deceased workman, namely:-

(i) a widow, a minor (legitimate or adopted) son, an unmarried daughter or a widowed mother;

...'

learned counsel for the second respondent submitted that dependent means a widow, a minor son, an unmarried daughter or a widowed mother. As the appellant has not produced any legal heir ship certificate or the decree granting divorce between the deceased and the first wife by the competent Court, the appeal is liable to be dismissed.

5.I find merits on the submission made by the learned counsel for the second respondent. When it is the contention of the appellant that she is the second wife of the deceased and he died during the course of employment, the appellant has to produce some supporting documents to establish their relationship, namely, legal heir ship certificate, decree granting divorce between the deceased and the first wife, etc., but, no such documents have been produced by her. Therefore, this Court is unable to find any merits in this appeal. Accordingly, the questions of law raised by the appellant are answered against her and the appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Commissioner for Employees Compensation,
Coonoor.

Copy To

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.36595

C.M.A.No.450 of 2020

RR(CO)
CS/16/12/2020

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