

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.52 of 2016
and C.M.P.Nos.387 and 7153 of 2016

M/s.United India Insurance Co. Ltd.,
Door No.280, Ooty Main Road,
Mettupalayam,
Coimbatore District.

... Appellant / Respondent-II

-vs-

1.Mrs.Thangamani	... Respondent-I / Petitioner-I
2. Mr.M.Jaishankar	... Respondent-II / Petitioner-II
3. Mr.M.Praveenkumar	... Respondent-III / Petitioner-III
4. Miss.Jayapriya	... Respondent-IV / Petitioner-IV
5. Mr.K.E.Sandhumohamed	... Respondent-V / Respondent-I

PRAYER: Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 to set aside the Order passed in E.C.No.58 of 2014 dated 31.08.2015 by the Assistant Commissioner for Workmen Compensation at Coimabatore District and be pleased to dismiss the above claim.

For Appellant : Mr.J.Chandran

For R1 to R4 : Mr.C.Mouli

For R5 : Mr.C.A.Dinakar

O R D E R

This Appeal has been filed to set aside the Order passed in E.C.No.58 of 2014 dated 31.08.2015 by the Assistant Commissioner for Workmen Compensation at Coimabatore District, by which the Appellant and the 5th Respondent herein were jointly directed to deposit the compensation of Rs.6,20,150/- along with interest @ 12% per annum within 30 days to the respondent, with liberty to the Appellant to recover the interest portion (from 08.08.2014 till the actual date of deposit) from the 5th respondent.

2. Aggrieved by the said order, the Insurance Company, which is the 2nd Respondent in E.C.No.58 of 2014 has preferred the present appeal. The Respondents 1 to 4 are the applicants / legalheirs of the deceased Manikandan and the 5th Respondent is owner of the lorry.

3. Facts leading to filing of an application before the Assistant Commissioner for Workmen Compensation at Coimabtoe District are as follows:

i) One Manikandan, who was employed as Driver in the lorry bearing Regn.No.TN49-W-8370, belonging to the 5th Respondent herein met with an accident on 15.09.2013 by hitting on the roof of a bus stand and sustained grievous injury. Thereafter, he was taken to the Government Hospital, Sathyamangalam, where he was declared dead by the Doctors;

ii) Stating that the said Manikandan was earning a sum of Rs.20,000/- per month plus the daily allowance of Rs.250/-, his wife and children had filed an application before the Assistant Commissioner for Workmen Compensation at Coimabtoe District, claiming a compensation of Rs.36,20,000/- to be paid by the Insurance Company and the owner of the lorry jointly or severally, as the deceased is the sole breadwinner of the family;

iii) Before the Authority, the owner of the lorry was set exparte for his non appearance and Authority, after perusing the records and considering the fact that intimation was given to the Insurance Company only on 07.08.2014, had directed the 5th respondent to pay the compensation till the date of intimation given to the Insurance Company, with further direction to the Insurance Company to pay the compensation from the date of knowledge till the date of deposit, with 12% interest.

4. The main contention put forth by the learned counsel for the Appellant / Insurance Company is that since the 5th respondent, even after coming to know of the fact that the driver was not in possession of a valid licence, had allowed him to drive the vehicle against the rules and regulations of the Motor Vehicles Act and therefore, the 'pay and recover' order of the authority is arbitrary in nature and unsustainable. Secondly, there was no iota of evidence to establish that there existed employer and employee relationship between the deceased and the 5th respondent, in absence of which, the Insurance Company is not liable to at first pay compensation and recover from the employer.

5. Heard the learned counsel for the parties.

6. A cursory glance at the driving licence of the deceased annexed in the typeset of papers discloses the fact that the said driving licence had expired as early as on 18.04.2010 and the accident had occurred on 15.09.2013. There was no document produced to show that the expired licence was renewed thereafter and it was stated that the 5th respondent had paid a fine of Rs.2,500/- to the Transport Department on 18.09.2013 in permitting the deceased to drive his vehicle without licence.

7. If a person, who drives a vehicle without valid licence, in a drunken mood, without wearing helmet, etc., causes an accident, suffers severe injuries or dies, should not be shown any sympathy by Courts, much less pay and recover and no compensation should be granted on humanitarian grounds so as to perpetuate illegality and set a bad precedent. Though the insurance company has got a right to recover the amount from the concerned person by way of a paper order, it will not be known to anybody as to when the amount will be returned by the errant person. However, it is to be emphasised that as a part of judicial discipline, this Court sitting singly has no other option, but to scrupulously follow the order of the Larger Bench extending the leniency of pay and recover, even if it is contrary to the provisions of Statute.

8. It is seen that after accident, the Motor Vehicles Inspector also inspected the vehicle and submitted his report, from which it is evident that no Driving Licence of the deceased was produced for verification. After inspection of the vehicle, he opined that the accident had not occurred on account of any mechanical defect of the vehicle, thereby an inference can be drawn that the accident had occurred due to human error. Though this Court is not in agreement with the order of the Authority with regard to pay and recover, it is to be noted that there are precedents that such orders were passed by this Court from time to time so as not to drive the injured or family of the deceased here and there to receive the compensatory amount.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the Order passed in E.C.No.58 of 2014 dated 31.08.2015 by the Assistant Commissioner for Workmen Compensation at Coimabatore District is hereby upheld. The Authority is directed to release the entire amount lying in deposit to the family of the deceased, namely, Respondent Nos.1 to 4 herein together with accrued interest after conducting dependent enquiry. It is needless to mention here that if any demand is made by the Insurance Company, the 5th respondent / owner of the vehicle has to pay the amount together with 12% interest without resorting to any dilatory tactics, failing which, the movable or immovable property of the 5th respondent shall forthwith be attached and possession taken with the help of Police Force. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To:

1.The Assistant Commissioner for Workmen Compensation,
Coimbatore District.

2.The Commissioner for Workmen Compensation,
Coimbatore District.

+1cc to Mr.J.Chandran, Advocate SR.No.6870

+1cc to Mr.C.Mouli, Advocate SR.No.5784

Civil Miscellaneous Appeal No.52 of 2016

NR(CO)
GMY(22/05/2020)