

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.1776 of 2018

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road,
Royapettah,
Chennai 600 014.

... Appellant /2nd Opp.Party

vs.

1. Karmi Devi
2. Pradeep Kumar
3. Sheela Kumari (Minor)
4. Sumithra Kumari (Minor)
5. Kanchana Kumari (Minor)
6. M/s.East Coast Construction Industries Limited,
Buhari Building,
No.4, Moors Road,
Chennai 600 006. ...Respondents 1 to 5 / Appellant

Civil Miscellaneous Appeal filed under 30 of the Workmen's Compensation Act, 1923, against the order dated 31.08.2017 passed by the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour-I, Chennai, in E.C.No.84 of 2014.

For Appellant : M/s.M.B.Gopalan Associates

For Respondents 1 to 5 : No appearance

For 6th Respondent : Mr.P.J.Rishikesh

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J U D G M E N T

Challenging the order dated 31.08.2017 passed by the Commissioner for Workmen's Compensation-cum-Deputy Commissioner of Labour-I, Chennai, in E.C.No.84 of 2014, the Appellant/Insurance Company has come up with the present Appeal.

2. It is not in dispute that, the deceased workman died due to the injuries sustained in an accident, which occurred out of and in the course of his employment with the 6th Respondent/employer. It is also not in dispute that, the Insurance Policy vide Ex.R4 covers the period of the accident in question.

3. The only issue for consideration is that, whether the learned Commissioner is right in foisting the liability of payment of compensation to the legal heirs of the deceased workman, when there is a categorical evidence to the effect that, the 6th Respondent/employer of the deceased workman failed to comply with the basic safety requirements laid down in Tamil Nadu Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006.

4. Learned counsel for the Appellant/Insurance Company contended that, the Commissioner has grossly erred in ignoring the F.I.R. on the pretext that Final Report of Police has not been filed, when the FIR itself is a proof that, the employer has miserably failed to comply with the safety regulations, i.e. provision of safety nets.

5. During the course of hearing, this Court suggested as to whether the Appellant/Insurance Company and the 6th Respondent/employer of the deceased workman can share the compensation in equal proportion, as the dependents have lost the only earning member of their family.

6. On instructions, learned counsel appearing for the 6th Respondent/employer submitted that, he has communicated the suggestion of this Court to the 6th Respondent/employer and that, the 6th Respondent is not willing to pay more than Rs.1 lakh, though, according to them, they are not liable to pay even a single pie. It is his contention that, F.I.R. is only an information to proceed further with the investigation, and it cannot be treated as a piece of evidence.

7. It is no doubt true that, F.I.R. is only an information and not a piece of evidence to set the ball in motion, with regard to criminal investigation. However, in matters like the one on hand, F.I.R. has to be necessarily treated as a piece of evidence. In the present case, immediately after registering the F.I.R., information as to the death of the deceased workman, has been given to the 6th Respondent/employer, for the purpose of granting compensation.

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8. Further, the Insurance Policy marked vide Ex.R4 specifically stipulates that, if safety measures are not provided by the 6th Respondent/employer, the Insurance Company is not liable to pay any amount.

9. The case of the Appellant/Insurance Company is that, no safety measures have been provided to the deceased workman by the 6th Respondent/employer and hence, no compensation need to be paid by the Insurance Company to the dependents of the deceased workman.

10. The Appellant/Insurance Company has stepped into the shoes of the 6th Respondent/employer of the deceased workman only for the purpose of paying compensation. If the insurance policy is invoked, it is for the employer to establish their case before the appropriate forum, that, safety measures have been provided, and the burden is not on the Insurance Company.

11. In this case, when there is a categorical stand taken by the Appellant/Insurance Company that, no safety measures were provided to the deceased workman, more particularly, in view of the Investigation Report that has been filed, the burden is on the 6th Respondent/employer to establish their case through documentary evidence that, safety measures have been provided to their workmen, as verbal evidence alone is not sufficient.

12. Also, the Investigation Report dated 17.04.2014 filed by the Police Department, clearly shows that, no safety measures were taken by the 6th Respondent/employer to save the life of the workmen working in the site. For better appreciation, relevant portion of the Investigation Report is extracted hereunder:

ENQUIRIES AT THE SITE:

We have made thorough enquiries at the site of the accident. We met Mr.Sadiq, the foremen and the site and met many other witnesses in this case. It was clearly revealed that Mr.Banarsi Paswan was doing centering work at the 7th floor roof and suddenly he lost balance and fell off from that height. They state that immediately they have arranged an ambulance took him to Stanley Medical College Hospital. The Doctors reported that he had died after some times. Our examination of the site reveals that, as per the statement given to the Police, the safety aspects at the side appears to be very poor. Usually in such sites, the general practice is that they tie a large net at the surface to hold the

people who accidentally fall off from the heights while working at the roof structuring etc. Such safety measure would have certainly saved the life of Mr.Banarsi Paswan.

CONCLUSION:

Hence, our enquiries in this case at various place and with various persons revealed that Mr.Banarsi Paswan was working with M/s.East Coast Construction at the site of IITM in Guindy on 17.07.2013. He had fallen down from the 7th floor centering position to the ground floor and sustained serious injuries and died. The accident had taken place around 05.30 p.m. at the work spot. Hence, it is confirmed that the accidental death of Mr.Banarsi Paswan has occurred while he was in the course of his employment and at the work site of the insured.

13. It is no doubt true that, this Court cannot go into the question of fact, unless there is a substantial question of law involved. But, the issue for consideration is that, whether the Authority is right in foisting the liability on the Appellant/Insurance Company to pay compensation to the legal heirs of the deceased workman, when there is a clear breach of Insurance Policy.

14. Admittedly, the accident which led to the death of the workman in question, took place at the 6th Respondent's work site. On a perusal of the Investigation Report filed by the Police Department, it is crystal clear that, the 6th Respondent/employer had not taken any safety measure to protect the lives of workmen at their site.

15. In view of the foregoing, this Court holds that, F.I.R. is a piece of evidence as far as this case is concerned, unless the contrary is proved by the 6th Respondent/employer. Consequently, the order under challenge is liable to be set aside.

16. Accordingly, the order dated 31.08.2017 passed by the Commissioner for Workmen's Compensation-cum-Deputy Commissioner of Labour-I, Chennai, in E.C.No.84 of 2014, is set aside with the following directions:

(i) The entire amount lying in deposit to the credit of E.C.No.84 of 2014 on the file of the Deputy Commissioner of Labour-I, Chennai, shall be returned to the Appellant/Insurance Company, forthwith.

(ii) The 6th Respondent/employer is directed to deposit the compensation amount together with interest at 12% per annum from the date of accident, to the credit of E.C.No.84 of 2014 within a period of 30 days from the date of receipt of a copy of this order. The said amount shall be disbursed to the dependents of the deceased within a period of 60 days from the date of deposit, by conducting dependents' enquiry.

(iii) If the 6th Respondent/employer fails to remit the amount within the time stipulated, revenue recovery proceedings shall be initiated, and the property of the 6th Respondent Company or that of the Directors of the Company shall be attached for recovery and payment.

17. In fine, the Civil Miscellaneous Appeal is allowed with the above directions. No costs. Consequently, connected C.M.P.No.13714 of 2018 is closed.

Sd/-

Assistant Registrar -ADI (MDU)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Commissioner for Workmen's Compensation/
Deputy Commissioner of Labour-I, Chennai.

+1cc to Mr.P.J. Rishikesh, Advocate, S.R.No.17124

+1cc to M/s.M.B.Gopalan Associates, S.R. No.18307.

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Judgment in
C.M.A.No.1776 of 2018

BS (CO)

VSI-2 (27.05.2020)