

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
C.M.A.No.1645 of 2020

M/s.United India Insurance Co. Ltd.,
Sillingi Building, IV Floor,
No.134, Greams Road,
Chennai - 6.

.. Appellant/2nd Respondent

Versus

1.Thirumathi. A.Devi
2.Thiru. Surendar Kumar,
3.Thiru.A.Dhanush Kumar
4.Thiru.D.Sivanandam

.. Respondents/1 to 3 Petitioners/
1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of the Employees Compensation Act, 1923, to set aside the final award dated 16.12.2019 passed in E.C.No.115 of 2011 by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour-I) at Chennai.

For Appellant : Mr.J.Michael Visuvasam
For R1 to R3 : Mr.K.Suryanarayanan

JUDGMENT

Heard Mr.J.Michael Visuvasam, learned counsel for the appellant/Insurance Company, and Mr.K.Suryanarayanan, learned counsel for the respondents 1 to 3/caveator, through Video Conferencing, due to COVID-19 pandemic.

2. In the claim petition, it is averred that the deceased/S.Ashok Kumar was the husband of first claimant/Mrs.A.Devi and father of the claimants 2 and 3. It was further claimed that the deceased was working as Auto driver under the fourth respondent/first opposite party on a monthly salary of Rs.8,000/- with a daily batta of Rs.100/-. While he was driving the auto bearing Registration No.TN-01-M-9737 and proceeding from East to West direction in Perambur High Road, near Jamaliya EST quarters, he applied sudden brake, as a result, he lost control and hit against the centre median and thereby he sustained grievous injuries. Although he was taken to Government General Hospital, Chennai, he died on 01.04.2011

in the same hospital. Based on the said incident, the wife and children of the deceased have laid a claim petition stating that the deceased/S.Ashok kumar, driver of auto bearing Registration No.TN-01-M-9737, died on 01.04.2011, when he was driving the said auto, therefore, it was claimed that the above accident had occurred during the course of employment under the fourth respondent/first opposite party. It was further claimed that the first opposite party/owner of the vehicle is the employer and the second opposite party/appellant herein is the insurer of the Auto bearing Registration No.TN-01-M-9737, and the insurance was valid from 01.07.2010 to 30.06.2011.

3. Learned Joint Commissioner of Labour-I, Chennai, after perusing the oral and documentary evidences available before him, passed the final order awarding a sum of Rs.7,63,240/- for the death of first claimant's husband/S.Ashok Kumar. Aggrieved by the same, the appellant/Insurance Company has filed the present appeal raising the following substantial questions of law:-

i) Whether the finding of the learned Joint Commissioner that the deceased was an employee of the fourth respondent is justified, when the documentary evidence, namely, Ex.R1 Extract of the case diary shows that the deceased had hired the autorickshaw?

(ii) Whether the Joint Commissioner was correct in holding that the alleged accident had occurred in the course and out of employment of the deceased under the fourth respondent, when the oral evidence of PW2 supported by Ex.P1-FIR categorically discloses that the deceased along with his two relatives was returning back from shopping at the time of accident?

(iii) Whether the finding of the learned Joint Commissioner that the deceased was employed under the second respondent and that the accident had occurred in the course of employment can be sustained, when the oral evidence of the first respondent was contrary to the documentary evidence, namely, Ex.R1-extract of the case diary and Ex.P1-FIR?

4. Mr.Michael Visuvasam, learned counsel appearing for the appellant/Insurance Company, assailing the findings and conclusions reached by the learned Joint Commissioner and the grounds of claim made by the claimants/respondents 1 to 3 hearing, pleaded that learned Joint Commissioner gravely failed to appreciate the chief examination of PW2-Mr.Praveen, nephew of

the deceased/S.Ashok kumar, and Ex.P1-FIR, wherein it is categorically recorded that while PW2, Venugopal, his cousin brother, and the deceased, were returning back to home after purchasing the clothes for the death anniversary of deceased's mother, the accident had occurred. Thus, it eventually shows that the deceased had used the auto bearing Registration No.TN-01-M-9737 for his personal use and therefore, it was not in the course of employment or out of the employment. It is further submitted that the findings of the learned Joint Commissioner that the deceased was an employee of the fourth respondent/first opposite party based on the evidence of PW1 and PW2 is unjustified and contrary to the evidence of both oral and documentary evidences brought on record.

5. It is further submitted that the criminal case records available before the Court proved that the deceased was not an employee of the first opposite party/fourth respondent herein as he has hired the said Auto. Even as per FIR-Ex.P1, he had hired the said Auto for his personal use, hence, there was no employer and employee relationship between the first opposite party and the deceased. Therefore, he contended, the finding given by the learned Joint Commissioner that the deceased was an employee of the fourth respondent is unjustified and contrary to facts.

6. Continuing further, he argued that under the Employees' Compensation Act, 1923 (in short "the Act"), liability of employer for payment of compensation arises if a personal injury caused to workman by accident arising out of and in the course of his employment. Ingredients necessary for attracting charging provision contained in Section 3 the Act shows that (i) injury must be caused to workman; (ii) that such injury must have been caused by accident; (iii) and that it arose out of or in the course of his employment. In this case, when there must be some evidence that the deceased alone is responsible for causing such accident due to his rash and negligent driving when he was using the said auto for his personal use, finding arrived at by the learned Joint Commissioner contrary to the facts is incorrect.

7. Concluding his arguments, learned counsel for the appellant argued that when the Employees' Compensation Act, 1923, is a piece of social welfare legislation with an object to provide compensation to the injured or the deceased employees in the event of loss of earning capacity due to the accident, learned Joint Commissioner must appreciate the fact that the compensation can be granted as per the parameters set out in the Act and not otherwise. Therefore, learned Joint Commissioner was not justified in holding that the appellant/Insurance Company is liable to pay the compensation, that too, without following any of the parameters as set out in the Act.

8. Per contra, Mr.K.Suryanarayanan, learned counsel for the respondents 1 to 3 / claimants submitted that the husband of the first claimant was working as Auto driver bearing Registration No.TN-01-M-9737 under the first opposite party/fourth respondent herein. Whiles, on 01.04.2011 at about 13.15 hours, while he was driving the said Auto proceeding from East to West direction in Perambur High Road, near Jamaliya EST quarters, he applied sudden brake, as a result, by loosing control, he hit against the centre median, due to which, he sustained grievous injuries and immediately thereafter, although he was taken to Government General Hospital for treatment, unfortunately, he died on 01.04.2011. Postmortem conducted by the Government General Hospital shows that he died due to grievous injuries sustained while he was driving the said Auto. The said accident was registered in Crime No.189/P1/2011 on the file of G3 Police Station, Traffic Investigation Wing, Kilpauk, Chennai. The first opposite party has taken insurance with the appellant Insurance Company vide policy No.010804/31/10/02/00013069, which was valid from 01.07.2010 to 30.06.2011. Therefore, when the accident had occurred on 01.04.2011, the policy was in existence, hence, the appellant/Insurance Company is liable to pay the compensation. Thus, learned Joint Commissioner, finding that the accident had occurred on 01.04.2011 while the deceased was driving the said Auto and that the vehicle was also having valid insurance policy, fastening the liability on the Insurance Company, passed the impugned order awarding a sum of Rs.7,63,240/- to the legal heirs of the deceased/claimants, hence, the same does not call for any interference.

9. Heard the learned counsel appearing on either side and perused the materials available before this Court.

10. To decide as to who is responsible for the accident and whether the said accident had occurred during the course of employment or out of the employment, let me first examine the FIR-Ex.P1. A proper reading of FIR-Ex.P1 shows that while PW2-nephew of the deceased, his cousin brother Venugopal and his maternal uncle/deceased were returning back after purchasing the clothes for the death anniversary of deceased's mother, the said accident had occurred on 01.04.2011. After registration of the FIR, enquiry was also conducted by Inspector of Police, G3 Traffic Investigation Wing, Kilpauk, Chennai, whereby it is categorically stated that the deceased was driving the Auto in a rash and negligent manner, due to which, he hit against the centre median and it has caused grievous injuries to him, as a result, he died on 01.04.2011 while he was in the Government General Hospital, Chennai. Thus, it goes without saying that the accident had occurred only due to his rash and negligent driving.

11. Therefore, now let us see, how the Act provides for payment of compensation to the injured or the legal heirs of the deceased who died in the accident. The legal heirs/claimants have to prove that the deceased was an employee of the fourth respondent/first opposite party at the time of accident. As stated above, a mere reading of FIR also shows that while the deceased and two of his relatives were returning back to home after purchasing the clothes for death anniversary of deceased's mother, the said fateful accident had occurred and therefore, it makes it clear that the deceased had used the said Auto for his personal purpose and not for employment purpose. With this in view, the claim petition has to be decided as to whether the victim had sustained grievous injury from and out of the accident and whether it had occurred during the course of employment or out of the employment.

12. In this context, it is apposite to take note of some of the principles laid down by the Hon'ble Apex Court in *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali* and another [2006 (2) TN MAC 255 (SC)], for awarding compensation under the Employees' Compensation Act. Paragraph Nos.24 and 25 thereof are extracted below:-

24. There are a large number of English and American decisions, some of which have been taken note of in *ESI Corporation* (supra), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act.

25. The principles are :

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

13. In *Malikarjuna G.Hiremath Vs. Branch Manager, the Oriental Insurance Company* and another [2009 (1) TN MAC 346 (SC)], the Hon'ble Apex Court observed that there must be a nexus between the accident and employment and only in such case, the claim for compensation must succeed. For better appreciation, paragraph No.18 thereof is extracted below:-

"18. In *Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mohd. Issak* (1969 (2) SCC 607), this Court held:

"5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

The above observation abundantly makes it clear that to come within the ambit of Employees' Compensation Act, the injury by accident must arise both out of and in the course of employment. In the course of employment means, in the course of the work which the workman is employed to do and which is incidental to it. Arising out of employment means, during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not

otherwise have suffered. In other words, there must be a casual relationship between the accident and the employment. In the present case, as highlighted above, Ex.P1-FIR clearly shows that while PW2-nephew of the deceased, his cousin brother Venugopal and his maternal uncle/deceased were returning back after purchasing the clothes for the death anniversary of deceased's mother, the fateful accident had occurred on 01.04.2011. This would clearly show that the deceased had used the Auto for his personal use and thus, it is crystal clear that the accident never took place either in the course of employment or arising out of employment. Secondly, the report submitted by the Inspector of Police, Traffic Investigation Wing, G3 Kilpauk Police Station, Chennai, vividly makes it clear that the accident had occurred on the fateful day only due to the rash and negligent driving of the deceased, because the deceased drove his auto rashly hitting the centre of road median. However, learned Joint Commissioner, while passing the impugned award, did not take note of any of the above said aspects. Therefore, in my considered view, erroneous findings and conclusions reached by the learned Joint Commissioner are unsustainable in law and accordingly, first substantial question of law is answered against the claimants/respondents 1 to 3 herein.

14. Moreover, when there was an oral evidence by PW2 that while he was returning along with the deceased and one Venugopal, his cousin brother, after purchasing clothes for the death anniversary of deceased's mother, the fateful accident had occurred on 01.04.2011, it further shows that the deceased had used the said Auto only for his personal use and thus, legal heirs of the deceased/claimants are not entitled to claim compensation. Accordingly, second and third substantial questions of law are also answered against the claimants.

15. Before parting with the case, it may be mentioned herein that the claimants, knowing pretty well that the deceased had used the said Auto for personal use for purchase of clothes for the death anniversary of deceased's mother, have falsely set up the present case, that too, concealing the report submitted by the Inspector of Police, Traffic Investigation Wing, G3 Kilpauk Police Station, Chennai, which categorically discloses that only due to the rash and negligent driving the deceased the accident had occurred on the fateful day. Thus, it is amply clear that the claimants have approached the Court with unclean hands and obtained an award from the learned Joint Commissioner of Labour-I, Chennai, and ultimately, it was taken up to the High Court by the Insurance Company at the cost of the public fund. It is settled legal position that the Courts of law are meant for imparting justice between the parties and one who comes to the Court must come with clean hands. A person, who's case is based

on falsehood, has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. Useful reference can be had from S.P.Chengalvaraya Naidu (dead) Vs. Jagannath (dead) and others [(1994) 1 SCC 1]. Therefore, in view of the settled legal position, as the claimants have approached the Court suppressing the report submitted by the Inspector of Police, Traffic Investigation Wing, G3 Kilpauk Police Station, Chennai, their claim for seeking compensation for the death of the deceased/first claimant's husband cannot be sustained.

16. Accordingly, for the reasons stated above, impugned award passed by the learned Joint Commissioner of Labour-I, Chennai, is set aside and the Civil Miscellaneous Appeal stands allowed. The appellant/Insurance Company is permitted to withdraw the award amount already deposited by them forthwith. No Costs. CMP.No.12109 of 2020 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Commissioner for Employees Compensation,
(Joint Commissioner of Labour-I),
Chennai.

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 38167.
+1 CC to Mr.S.Ravikumar, Advocate sr 38399.

C.M.A.No.1645 of 2020

SRI (CO)
SP(04/03/2021)

WEB COPY