

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3263 of 2017
and C.M.P.No.20362 of 2017

United India Insurance Company Limited,
No.2, Sankaran Road,
Namakkal.

... Appellant/2nd Respondent

Vs.

... Respondents 1 to 3/Applicants

1.Esakkimuthu
2.Chithra
3.Ram (Minor)
(3rd Respondent Minor Rept. By
Father and NF 1st Respondent)

4.Raviselvam ... 4th Respondents/1st Respondent

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the order made in W.C.No.990 of 2015, dated 30.01.2017 passed on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Namakkal.

For Appellant : Mr. Vijayagaraghavan
M/s. M.B.Gopalan Associates
For Respondents : Mr.R.Nalliyappan for R1
No appearance - R2 to R4

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 against the order made in W.C.No.990 of 2015, dated 30.01.2017 passed by the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Namakkal.

2. The case of the respondents / claimants is that one Periyasamy, who was working as a Driller under the 4th respondent's bore well lorry bearing Reg.No.KA-01-MK-3879, insured with the appellant's Insurance Company. While, the deceased Periyasamy was working under the 4th respondent at

B.Kodur village and Mandal Y.S.R.District, Andhrapradesh, on 04.06.2015, while trying to inspect a new driller point he had travelled in his bike bearing Registration No.TN-34-P-2921, at that point of time, another bike bearing Reg.No.AP-04-AZ-1932 driven by its rider in a rash and negligent manner had hit against the said Periyasamy and sustained grievous injuries and was taken to KIMS Hospital, Kodur. The Doctor declared on arrival that he died on the way and postmortem was conducted in the same hospital. The police authorities have registered a case under Section 304(A) IPC, in Crime No.67 of 2015, on 05.06.2015. Further it is seen that, the said Periyasamy was only 28 years old at the time of accident and was an employee under the 4th respondent, earning a sum of Rs,12,000/- per month including batta for the past 2 years prior to the accident. Also, by stating that the said deceased Periyasamy is the sole breadwinner of the family, the claimants, who are the father, sister and younger brother has filed a claim petition claiming a sum of Rs.10,00,000/- as compensation.

3. Denying the averments of the respondents / claimants, the appellant had filed a counter affidavit stating that the deceased Periyasamy had worked as a driller under the 4th respondent's vehicle-Bore well lorry bearing Reg.No.KA-01/MK-3879 and the vehicle was insured with the appellant's insurance company in Policy No.1709003114P/101950791, while verifying the policy, it is clear that the same did not cover the driller and no premium has paid to the driller and the 4th respondent paid only for an additional driver. Hence, the appellant has stated that they are not liable to pay any compensation to the driller. He further contended no proof filed to show that the deceased periyasamy was engaged as a driller on 04.06.2015 and in the course of employment, as a driller in the said lorry, while the deceased was riding his bike bearing Reg.No.TN-34/P-2921 to inspect the way of new drill point at B.Kodur village and mandal, Y.S.R.District, Andhrapradesh, at that time a rider of another bike bearing Registration No.AP04/AZ1932, coming from opposite direction in a rash and negligent manner hit against the deceased periyasamy's vehicle. Both the vehicles collided, as a result, Periyasamy died. As no proof has been shown that he was engaged in the drill work for drilling bore well in Andhrapradesh on the date of accident the claim to be rejected.

4. As per FIR, the accident had occurred at 7.30 p.m. i.e., at the night time and the statement of search of drilling point by bike is accepted there is no driving licence issued for the deceased person to drive any vehicle at the time of accident. The manager of the bore well lorry had instructed him to drive the vehicle to inspect the drilling point, was not proved with any substantial evidence that he was working on that day, thereby sought to dismiss the claim petition.

5. The Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Namakkal, after considering the pleadings, counter affidavits and materials placed on record, has awarded a sum of Rs.8,52,160/- to the respondents 1 to 3 / claimants. Aggrieved against the same, the appellant has come up with the above appeal.

6. The learned counsel for the appellant has submitted that the vehicle insured by the 4th respondent (Driller lorry) was not involved in any accident. Further, that the appellant has only insured their vehicle and without its involvement in the accident, there can be no liability for death of an alleged employee of the vehicle. The appellant under motor vehicle policy was subject to liability for accident caused by the vehicle to third party while playing on road and not merely by reason of employment of victim by the owner of the vehicle.

7. The learned counsel for the appellant in support of his contentions relied on the Judgment of Apex Court [Mamtaj Bi Bapusab Nadaf and others V. United India Insurance Company and Others] reported in (2010) 10 Supreme Court Cases 536.

8. This Court, on 28.11.2017, has admitted this appeal by raising the following substantial questions of law.

'1. Whether the Commissioner has erred in holding the Appellant liable in a case where the vehicle insured by them (Driller Lorry) was not involved in any accident?

2. Whether the Commissioner could have held the Appellant liable merely on the pretext that the deceased was in the course of employment of the owner of the vehicle, ignoring that the vehicle itself was nowhere in the scene of accident and was not involved in the accident?

3. Whether the finding of the Commissioner that the deceased was in the course of employment was itself perverse in as much as there could not have been a site inspection in the night?".

9. Though notice was ordered on 28.11.2017 to the respondents 2 to 4, there is no representation for them either in person or through learned counsel to defend their case.

10. The learned counsel for the 1st respondent submitted that the deceased travelled in the two wheeler to the spot where his owner / 4th respondent directed him to inspect for drilling point, and only during such time, the vehicle in which the deceased was travelling met with accident and he died. Therefore, the learned counsel submitted that the travelling of

the deceased was only in connection with his work and therefore, he is liable for compensation under the Workmens' Compensation Act. The learned counsel has submitted that the Tribunal was correct in fixing the liability on the Insurance Company since, the deceased was working as a driller in the said vehicle. He further submitted that by virtue of the stay granted by this Court in C.M.P.No.20362 of 2017 in C.M.A.No.3263 of 2017, dated 28.11.2017 the entire amount deposited by the insurance company has been withheld. The family of the deceased is living in utter poverty and submitted that in case, this Court is of the view that the insurance Company is not liable to pay compensation, this Court may order the insurance company to pay the compensation and recover the same from the 4th respondent/owner. He submitted that this litigation is purely between the appellant and the 4th respondent and the family of the deceased should not be in any way put in hardship. The learned counsel therefore says that the stay order granted by this Court shall be vacated and the family of the deceased could be compensative.

11. The learned counsel for the respondents in support of their contentions has relied on the following judgments:

(i) Judgment of this Court reported in 2012 (1) TNMAC 814 (Mad) [Oriental Insurance Co. Ltd., Gobichettipalayam, Erode District V. T.Vijaya and others], wherein it is held that 'death of workman, whether caused during course of employment or notional extension of employment. Scope of deceased working as a driller in rig unit owned by 5th respondent and was employed to sink borewell for purpose of erecting power station in Amaravathi Dam, on date of accident, deceased after completing his shift working as a driller to sink borewells went to take bath in Dam to wipe out dust spread on his body due to drilling work, deceased drowned in Dam and died on spot. Under such circumstances, applying principle of notional extension of time of employment, held, accident took place during period of notional extension of employment. Therefore, finding of WC Commissioner that accident took place during course of his employment does not suffer from any infirmity. Expression 'employment' in Section 3 is wider than actual work / duty which workman had to do.'

(ii) Judgment of this Court reported in 2007 (5) CTC 733 [The Management of Wentworth Estate, Cherambadi P.O., Nilgiris, Tamilnadu V. Rethini].

12. Heard the learned counsel for the appellant and the 1st respondent and perused the documents placed on record.

13. Though the claimants have stated before the court below

that the deceased was earning a sum of Rs.12,000/- per month and he was aged 28 years, they have not produced any material evidence to prove the same, hence, the court below by considering all the evidences placed on record has fixed the minimum wages for the deceased as Rs.8,000/-, in view of the government order in S.O.1258(E) dated 31.05.2010 and taking note of Ex.P.1, FIR and Ex.P.4, Post mortem report, the court below had fixed the age of the deceased as '28'. Further, the court below by considering the documents marked on the side of the claimants, FIR, Ex.P.1 Vehicle Registration Certificate, Ex.P.2, Insurance Policy, Ex.P.3, Post Mortem Report, Ex.P.4, death Certificate, Ex.P.5, Legalheirship Certificate, Ex.P.6, Ration card, Ex.P.7 has held that the accident had happened during the course of employment. Also taking note of Section 4(4) Workmen Compensation Act, the court below has awarded a sum of Rs.5,000/- towards funeral expenses. Therefore, this Court is of the view that the court below has rightly arrived at the compensation, but wrongly fastened the liability on the insurance company, which needs interference in the hands of this Court.

14. That apart, in the Package Policy of the vehicle bearing reg. No.KA-01-MK-3879, in Section II :Liability to Third Parties 1(i) it is stated that 'Death of or bodily injury to any person caused by or arising out of the use (including the loading and / or un-loading of the vehicle'. Also, in the Judgment of the Hon'ble Supreme Court reported in (2010) 10 Supreme Court Cases 536 [Mamtaj Bi Babusab Nadaf and Others V.United India Insurance Company and Others] it is held at paragraph Nos.6 and 13 as follows:

'6. According to the reasoning of the High court, the Vehicle was not involved in the accident and the death of the workmen by no stretch of imagination can be said to have any proximate or direct connection with the vehicle. The High Court also observed that the mere fact that maize was brought to the spot where the workmen had died in the insured vehicle, would not render the Insurance Company liable in respect of the death, the cause of which was not proximate to the actual user of the vehicle.'

13. In our considered opinion, on the facts of this case, the view taken by the learned Single Judge of the Karnataka High Court seems to be justified and correct. Therefore, no interference is called for. This appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of this case, the parties to bear their own costs.'

15. Apart from the above, the lorry is insured under a motor

vehicle policy covering the liability of the owner for accidents arising out of use of the vehicle (lorry). The Requirement of Policies and Limits of liability under Section 147 (1)(b)(i) and (ii) of Motor Vehicle Act, which reads as under,

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.'

16. On a perusal of Ex.P.1, FIR, it is seen that the deceased viz., Periyasamy's father's name has been mentioned as 'A.Muthunadar' and in Ex.P.4, Post Mortem certificate also, it is seen that the deceased viz., Periyasamy's father's name has been mentioned as 'A.Muthunadar'. The claimants have not established the fact that the said Muthunadar's name is also known as Esikimuthu by filing proper document. The respondents / claimants herein have stated in the present appeal that Esikimuthu is the father of the deceased and no where it has been stated as Muthunadar, that being the case, a doubt rises in the minds of this Court as to who is the father of the deceased and why the same has not been correctly mentioned.

17. Further, a perusal of the Insurance policy conditions would go to show that there was no amount paid separately for driller, only the rig lorry has been insured and the question of paying any compensation by the insurance company will arise only when any accident has happened that too while the said rig lorry was plying. Admittedly, the lorry is insured under the motor vehicle policy covering the liability of the owner for accidents arising out of use of the vehicle and in the present case, when the lorry is not at all involved in any accident, the death of the deceased cannot be brought within the coverage under the motor policy of the lorry. The insurer of the lorry/appellant cannot be held liable on the basis of an allegation that the deceased was employed as driller in the lorry.

18. Therefore, in view of the above and being bound by the Judgment of Hon'ble Supreme Court reported in (2010) 10 Supreme Court Cases 536 [Mamtaj Bi Babusab Nadaf and Others V. United India Insurance Company and Others], this Court is of the opinion that the appellant / insurance company may be exonerated from paying the compensation to the claimants and accordingly, the appellant / insurance company is exonerated and the amount,

if any, deposited by the insurance company shall be withdrawn. Since it is proved that the deceased was the employee of the 4th respondent beyond any reasonable doubts and there was employee and employer relationship between the deceased and the 4th respondent, the 4th respondent, being the owner of the vehicle, is liable to compensate the respondents 1 to 3. Accordingly, the 4th respondent is directed to pay a sum of Rs.8,52,160/- to the claimants 1 to 3 and less funeral charges, a sum of Rs.8,47,160/- shall carry interest at the rate of 12% after 30 days from the date of accident till the date of realisation.

In the result, the present Civil Miscellaneous Appeal is allowed and the substantial questions of law raised by this Court are answered in favour of the appellant. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Labour,
The Commissioner for Workmen's Compensation
Namakkal.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai

+1 cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.18309
+1 cc to Mr.R.Nalliappan, Advocate, S.R.No.17799

WEB COPY

C.M.A.No.3263 of 2017
and
C.M.P.No.20362 of 2017

NRL (CO)
RN(18/05/2020)