

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2710 of 2018
and C.M.P.No.20496 of 2018

M/s.Reliance General Insurance Company Limited,
No.408, Perundurai Road,
Erode-11.

.... Appellant/2nd Opp.Party

-vs-

1.Selvan.Sathishkumar
2. Naresh Kumar (Minor)

(2nd Respondent Minor Represented by
Elder Brother and NF 1st Respondent)

... Respondents 1 &
2 / Applicants

3.Tmt.Malarvizhi

.... 3rd Respondent
/ 1st Opp. Party

PRAYER: Appeal is filed under Section 30 of Workmen Compensation Act, 1923 against the Award made in E.C.No.191 of 2014 dated 18.12.2017 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Salem.

For Appellant : Mr.N.Vijayaraghavan

For M/s.M.B.Gopalan Associates

For R1 & R2 : Mr.Ma.Pa.Thangavel

J U D G M E N T

This Appeal has been filed to set aside the order of the Deputy Commissioner of Labour, Salem dated 18.12.2017 made in E.C.No.191 of 2014, directing the appellant herein to deposit a sum of Rs.5,67,797 within 30 days in the name of the Deputy Commissioner of Labour, Salem, failing which, the amount is payable with interest @ 12% from the date of accident till the date of deposit.

Facts in brief:

2. The deceased is the husband of the 1st Opposite Party and she owned a lorry bearing Regn.No.TN-39-AJ-3367, in which

the deceased / husband of the owner of the lorry was said to be a Driver. On 21.06.2013 at about 2.00am, the lorry dashed against a Xerox shop and on account of the severe injuries on his head, the deceased succumbed to death. A case in Crime No.502 of 2013 has also been registered by the Gopi Police Station. Since the said lorry was insured with the appellant herein and the vehicle was in the name of their mother, the sons of the deceased had filed a petition before the Labour Court, Salem seeking for compensation by adding their mother as the 1st respondent in the petition.

3. The Labour Court, on appreciation of oral and documentary evidence, had directed the appellant to pay the amount as stated supra. Aggrieved by the said order, the appellant / insurance company is before this Court.

4. Learned counsel for the Appellant / Insurance Company has submitted that the fact of employer and employee relationship has not been proved in this case, as the wife is the owner of the vehicle and the deceased husband cannot be considered to be a paid employee. It is further submitted that the deceased drove the vehicle in the capacity as owner and therefore, it cannot be said that the death had occurred out of and in the course of employment. As such, the compensation granted by the Labour Court, Salem has no legs to stand and the order of the Deputy Commissioner of Labour, Salem is liable to be set aside by this Court.

5. In support of his submission, learned counsel for the Appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of Gottumukkala Appala Narasimha Raju and others, reported in (2007) 13 SCC 446, wherein it has been held as follows:

"22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the

insurer. The claim was not bona fide.

24. No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Section 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore.

25. The ingredients for maintaining a proceeding under 1988 Act and 1923 Act are different. The purpose for which a contract of insurance is entered into may be different, whereas 1988 Act, it will bear repetition to state, a contract of insurance would be mandatory; for the purpose of applicability of the 1923 Act, it will be optional and as indicated hereinbefore, in Harshadbhai Amrutbhai Modhiya (supra), even contracting out is permissible, as under the 1923 Act, the liability of the insurer is limited to the claim of the workman. The liability under Section 147(2) (b) of the 1988 Act, on the other hand, extends to third party.

26. Our attention has been drawn to some decisions of the High Courts which have taken different views in regard to the liability of the insurer to be joined as a party in a proceeding under the 1923 Act. It is not necessary for us to into the correctness or otherwise of the said decisions, as in our opinion, there does not exist any bar in the 1923 Act in this behalf. Section 19(1) of the 1923 Act specifically provides that any question in regard to the liability of a person who is required to indemnify the employer must be determined in the proceeding under the said Act and not by way of a separate suit. Thus, a question of this nature should be gone into the proceeding under the 1923 Act.

27. We, therefore, albeit for different reasons would uphold the judgment of the High Court. This appeal, therefore, being devoid of the merit, is dismissed. No costs."

6. On the contrary, learned counsel for the Claimants has contended that the deceased, who was aged about 49 years at the time of accident was employed as a driver of the lorry owned by his wife and he was paid a salary of Rs.10,000/- per month plus daily allowance. He has also contended that since the wife happens to be the owner, it cannot be automatically construed that the deceased also falls within the purview of co-owner. Considering all these factors, the Labour Court, Salem rightly granted compensation to the claimants, which warrants no interference by this Court. On the side of the Claimants, the following judgment of the Karnataka High Court in Divisional Manager, National Insurance Company Limited, Gulbarga vs. Smt.Pramilabai and others [MFA No.31321/2010 (WC)] decided on 02.03.2016 is relied upon, wherein it was observed as follows:

"14. Thus, it is clear that in the said GULNAZ JALEEL case (supra), the driver of the lorry who was none other than the father of the deceased has denied the averment of employment. In that context, this Court has held that in view of the lack of proof of employment of the deceased under the claimant, no compensation could be awarded under the Act. However, it is manifest from the said Judgment wherein it is categorically observed that, "though it may be possible that a son is employed under a mother", considering the denial of employment by none other than the driver, as well as the father of the deceased the Court has to come to the conclusion as stated above. Hence, this Judgment is not applicable to the facts of the present case.

15. As already observed by this Court, the Judgment of Gottukukkala Appala Narasimha Raju's case (supra) was rendered in a different context considering the relationship of employer and employee between the husband and wife. But, in the rural life, while many a times the persons in the family would be employed for doing the work. The fact that the driver and the cleaner are having blood relationship would not be a reason to suspect the employer and employee relationship between the son and the father and there is no such impediment in law to employ the family member as an employee by the employer. Considering the facts of this case in the light of the Judgments referred to above, I am of the considered view that no substantial questions of law arise for consideration before this Court in this appeal. Accordingly, the appeal stands dismissed. The claimants are permitted to withdraw the amount deposited before this Court."

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is very unfortunate that the deceased, who is the husband of the 1st Opposite Party died in an accident out of and in the course of employment and at the time of his death, the deceased was 49 years old, as his date of birth was 10.05.1964. It is seen that except the fact that the lorry was in the name of wife of the deceased, there is no evidence to prove that there was an employer and employee relationship. It was also not proved that the vehicle was purchased for business purpose and the business was run by the wife, in which the husband was an employee. It is no doubt true that the husband can be an employee under his wife and it is mandatory on the part the parties to produce documentary evidence to that effect. For the sake of convenience, vehicles are purchased in the name of wife and driven by the husband and in case of any untoward incident, they are trying to claim compensation from the Insurance Company on the ground stated supra. Of course, though there is no prohibition in law for the blood relatives to be the employer and employee, such contractual employment should be borne out by records to make out a claim against the insurance company.

9. In the present case on hand, there is no evidence that the vehicle has been used for business purpose and that there is also no evidence produced with regard to payment of Income Tax by the owner or the company or the proprietorship / partnership / establishment, in which the husband was employed as a driver. Therefore, this Court totally is not in agreement with the order of the authority in foisting the liability on the insurance company and unless the relationship of employer and employee is established beyond reasonable doubt, no compensation can be granted to the claimants.

10. Finding force in the contention raised by the learned counsel for the Appellant, the Civil Miscellaneous Appeal is allowed and the order of the Deputy Commissioner of Labour, Salem dated 18.12.2017 made in E.C.No.191 of 2014 is hereby set aside. The amount deposited by the Insurance Company shall be returned to them together with accrued interest within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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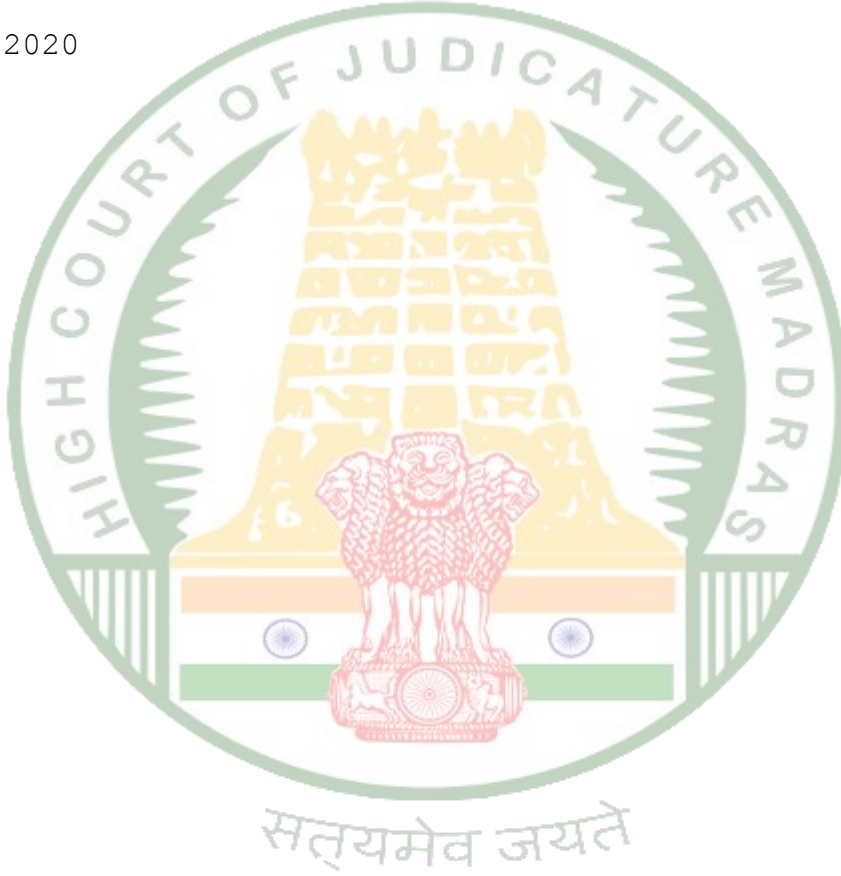
The Deputy Commissioner of Labour, Workmen Compensation,
Salem.

+1cc to Mr.P.Thangavel, Advocate, S.R.No.16780

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.16910

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AD(CO)
KKV/17/07/2020



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