

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. No.2999 of 2018 and
C.M.P. No.22733 of 2018

The Divisional Manager
M/s.United India Insurance
Company Limited
No.48, Chandra Plaza
Arcot Road, Saligramam
Chennai - 600 093

... Appellant

vs.

1.Tmt.R.Poongothai
2.S.Raju
3.R.Babu

... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the Final Award dated 25.04.2018 passed by the Commissioner for Employees Compensation (Joint Commissioner of Labour - II) at Chennai in E.C. No.126 of 2016.

For Appellant : Mr.J.Michael Visuvasam

For Respondents: No Representation

J U D G M E N T

Challenging the Final Order of the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai dated 25.04.2018 made in E.C. No.126 of 2016, saddling the liability on the insurance company to pay compensation to the respondents 1 and 2 herein, the present civil miscellaneous appeal has been filed by the Divisional Manager, United India Insurance Company Limited, Chennai,

2. Son of the respondents 1 and 2 herein, namely R.Sekar (deceased), has taken an auto-rickshaw for hire and driven the vehicle, met with an accident and died on the spot. The first opposite party before the authority/3rd respondent herein, was set ex-parte and he did not file any statement before the Authority under the Employees Compensation Act.

3. It is no doubt true that there was a motor policy for the auto-rickshaw bearing Registration No.TN-10 J-9095, but except the averment that the deceased was 33 years old and was earning a sum of Rs.15,000/- per month apart from Rs.150/- batta per day, no evidence has been produced. In fact, no steps have been taken for calling for the records from the first opposite party before the Authority. The First Information Report, namely Ex.P1, registered for the death of R.Sekar, by the Mount Traffic Police Station, states that the son of the respondents 1 and 2 died on the spot while he was driving the auto-rickshaw bearing Registration No.TN-10 J-9095, which was taken for hire. Since there is a motor policy and that the policy does not cover the incident in question, this court is of the view that the claimants are not entitled to any relief against the insurance company and as the first opposite party before the Authority has been set ex-parte, the entire claim can be made only against the first opposite party before the Authority, namely R.Babu, and he shall pay the compensation determined by the Authority.

4. In the evidence, it has been stated that the deceased was driving auto-rickshaw. The party is trying to improve the case by tendering evidence, which is not there in the First Information Report. FIR may be a piece of information and that may have to be corroborated in evidence. That principle will be applicable to criminal cases. Here, when a statement is made by the parents or a co-employee or any other person, who has no vested interest in favour of the employer, certainly the FIR will have to be treated as a piece of evidence. Since there is an evidence that he was driving an auto, naturally he has to take it on hire for the purpose of driving. The other interpretation that may be possible is that he would have driven it on hire and that he has paid rental charges for the purpose of using the vehicle. But on these two scores, there is no evidence on both sides.

5. Taking note of the fact that the dependents have lost the earning member of the family, though the issue can be answered in both ways, without treating this as precedent, the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai, is expected to release 50% of the amount lying in deposit to the dependents of the deceased after conducting dependent enquiry and the remaining 50% with accrued interest shall be returned to the insurance company. This will not be treated as a precedent, as this court is forced to modify the order instead of rejecting the entire claim against the dependents, more particularly, when they have lost their son.

6. Accordingly, the civil miscellaneous appeal is allowed in part and the Final Order of the Commissioner for Employees Compensation (Joint Commissioner of Labour-II), Chennai dated 25.04.2018 made in E.C. No.126 of 2016, is modified to the extent indicated above. The balance 50% of the amount lying in

deposit shall be returned to the insurance company within one month from the date of receipt of a copy of this judgment. No costs in the civil miscellaneous appeal. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Asr Sub Assistant Registrar

To

The Commissioner for Employees Compensation
(Joint Commissioner of Labour - II) at Chennai

Copy To
The Section Officer,
VR Section, High Court, Madras.

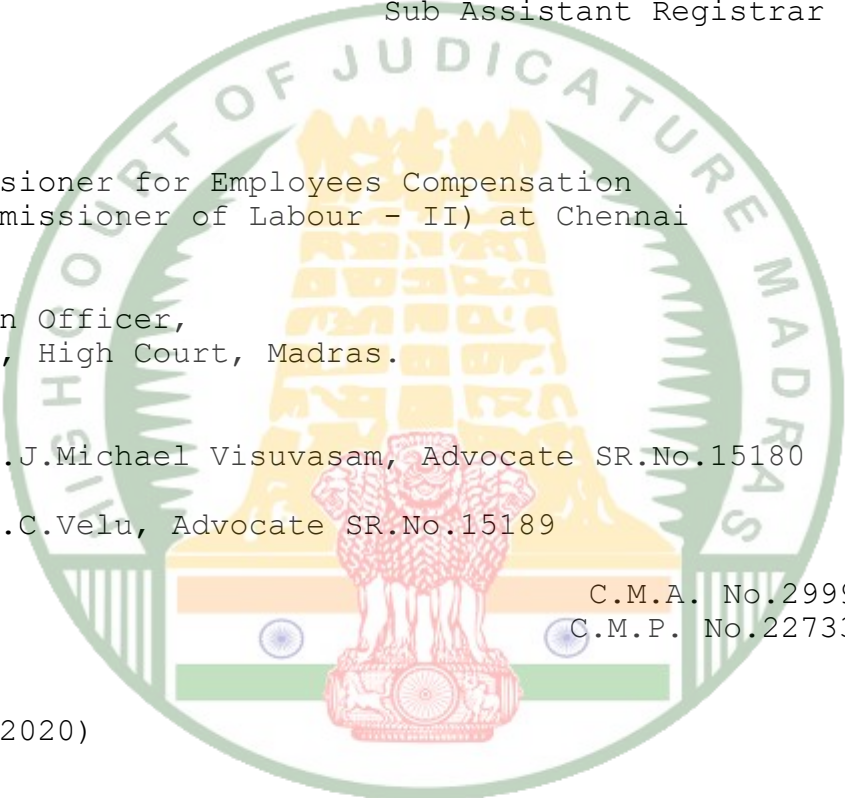
+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.15180

+1cc to Mr.C.Velu, Advocate SR.No.15189

C.M.A. No.2999 of 2018

C.M.P. No.22733 of 2018

SPD (CO)
GMY (23/03/2020)



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