



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.12.2020

Delivered on : 14.12.2020

WEB COPY

CORAM:

THE HONOURABLE **MR.JUSTICE G.ILANGOVAN**

C.M.A.(MD)No.1001 of 2010
and
M.P.(MD)No.1 of 2010

The Divisional Manager,
New India Assurance Company Limited,
Srivalli Buildings,
Anikodu Chittur, Palkad.

... Appellant /2nd Respondent

Vs.

1. Selvi,
2. Soundarapandi,
3. Senthurpandi,
4. P. Ramasamy,

... 1 to 3 Respondents/Petitioners

... 4th Respondent/1st Respondent

Prayer0: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation, against the order dated 28.01.2009 passed in W.C.No.117 of 2006 on the file of the Workmen Compensation Tribunal, Madurai.

For Appellant : Mr.K.Elangovan

For R1 : Mr.S.Ramesh @ Ramiah

For R2 to & R4 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed in W.C.No.117 of 2006 on the file of the Workmen Compensation Tribunal, Madurai, dated 28.01.2009.

2. The respondents 1 to 3/ claimants filed a claim petition before the Workmen Compensation Tribunal, Madurai in W.C.No.117 of 2006, claiming compensation for the death of one Murugan. The claimants are defendants and the legal representatives of the deceased Murugan and the Tribunal, after taking into consideration the oral and documentary evidence filed by both sides, awarded a sum of Rs.3,75,304/- (Rupees Three Lakhs Seventy Five Thousand Three Hundred and Four only) as compensation for the claimants. Against



which, the Appellant/ Insurance Company preferred this Civil Miscellaneous Appeal.

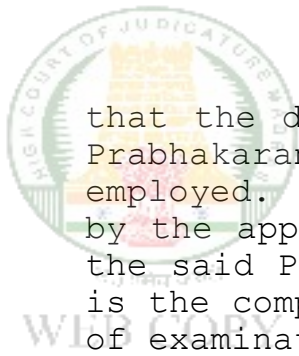
3. It is the case of the respondents 1 to 3/ claimants before the Commissioner of Workmen Compensation Tribunal, Madurai, that they are the wife, children and legal representatives of the deceased Murugan @ Murugesan and he was working as a loadman under the fourth respondent herein viz., P. Ramasamy in a Lorry bearing Registration No. TN B 3733. On 16.02.2006, the driver of the vehicle drove the same in a rash and negligent manner and the capsized because of that incident, the said Murugan @ Murugesan died on the spot itself. He was aged about 35 years, at the time of accident and he was drawing a sum of Rs.4,500/- per month from the fourth respondent herein. The fourth respondent / first respondent remained ex-parte, the appellant / second respondent filed a counter affidavit stating that the driver of the offending vehicle was not having valid driving licence, which is against the policy conditions. The deceased and other persons were employees of one Prabhakaran, who was running a lorry transport called "Rajam Lorry Transport". Neither the deceased nor other persons are the employees of the fourth respondent / first respondent. So, the appellant / Insurance Company is not liable to pay any compensation amount, though the offending vehicle was insured with the appellant / Insurance company.

4. Before the Commissioner, on the side of the petitioners, the first petitioner was examined as P.W.1 and 8 documents were marked as EX.P.1 to Ex.P.8. On the side of the second respondent, viz., the appellant herein, one witness was examined as R.W.1 and 4 documents were marked as Ex.R1 to Ex. R4.

5. On the completion of the enquiry, the Commissioner came to the conclusion that the deceased was working as a loadman under the fourth respondent and monthly salary of Rs.4,500/- was also proved and fixed liability on the 4th respondent and the Insurance Company and directed to pay a sum of Rs.3,75,304/- (Rupees Three Lakhs Seventy Five Thousand Three Hundred and Four only) as compensation with interest at the rate of 12% per annum and the same has to be deposited within a period of one month from the date of receipt of a copy of the order. Against which, the appellant / Insurance Company preferred this Civil Miscellaneous Appeal.

6. In this case, the point is to be considered by this Court is as to whether the order passed by the Commissioner for Workmen Compensation Tribunal, Madurai, is legally sustainable ?

7. In the statement given by one Murugan, which was recorded under Section 161(3) Cr.P.C. during police investigation stated to the effect that the deceased also travelled in the offending vehicle as a loadman which belongs to the fourth respondent herein. It was



that the deceased worked not under fourth respondent but under one Prabhakaran with whom the deceased was alleged to have been employed. It has also pointed out that the investigation conducted by the appellant through his investigating officer has not examined the said Prabhakaran. It has also been observed that only the owner is the competent person to identify the employee. So in the absence of examination of the said Prabhakaran, the contention raised by the Insurance Company was rejected by the Commissioner for Workmen Compensation.

8. So, I find no reason to differ from the opinion and the finding recorded by the Commissioner of Workmen Compensation, Madurai since no ground is made out in the appeal. The findings of the Commissioner is that the deceased was working as employee under the 4th respondent on proper appreciation evidence on record. There is no reason to interfere with findings and the award passed by the Commissioner of Workmen Compensation Tribunal, Madurai. Hence, so the finding to that effect by the Tribunal is confirmed. With regard to quantum also, no argument was advanced.

9. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed in in W.C.No.117 of 2006 on the file of the Workmen Compensation Commissioner, Madurai, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed. The respondents 1 to 3 herein / claimants are permitted to withdraw the award amount together with accrued interest after filing necessary application before the Commission.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Workmen Compensation Tribunal,
Madurai.



2.The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Elangovan, Advocate Sr.No.25464
+1cc to Mr.S.Ramesh @ Ramiah, Advocate Sr.No.25666

C.M.A. (MD)No.1001 of 2010
14.12.2020

VB (11.02.2021) 4P 6C