



WEB COPY

C.M.A. (MD) No. 305 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.12.2019

Delivered On : 26.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 305 of 2008

Management,
Bajaji Allianz General Insurance Co., Ltd.,
Bombay - 25. .. Appellant

Vs.

1.S.Usha

2.B.Kalyanai

3.B.Kala

4.B.Kavitha

5.Oothu Estate,
P.P.D.C. Limited,
Singampatti Group,
Manjulai Post,
Ambasamuthiram taluk,
Through its Management. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, to set aside the order dated 18.09.2006 received on 09.12.2006 made in W.C.No.50 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents 1 to 4	: Mr.C.Jawahar Ravindran
For 5 th Respondent	: No Appearance

JUDGMENT

Heard learned counsel appearing on either side.

2.This Civil Miscellaneous Appeal has been filed against the order passed in in W.C.No.50 of 2005 dated 18.09.2006 on the file of the Commissioner of Workmen Compensation (Deputy



Commissioner of Labour), Tirunelveli.

3.The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the claim petition. The claimants claimed a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as compensation.

4.The case of the claimants in W.C.No.50 of 2005 is as follows:

The husband of the first claimant, Balar was working in the Estate of the first respondent for the past 25 years. On 12.03.2005, when he was picking tea leaves, due to climatic conditions, he got chest pain and his co-worker Richard took him home and he was admitted at Palayamkottai Government Hospital on 13.03.2005 and he took treatment till 19.03.2005. He was advised to take rest and again he suffered from chest pain. On 24.03.2005, he was admitted in Manjolai Primary Health Centre. On the way back home, on 24.03.2005 at about 06.00 p.m., the deceased due to continuous work load and due to the climate conditions was not able to breathe properly and he died.

5.The case of the fifth respondent is that the deceased was a Field Worker and among the 100 other workers, the deceased cannot claim that his work load was heavy. There is no possibility for the ailment of the deceased due to climatic conditions. The deceased already has some ailments and he was taking treatment. In the medical report dated 06.06.2005, it is stated that the deceased was having pulmonary tuberculosis with pleural thickening of left lung and he took treatment from 1998 to 2004 and he took treatment in the estate hospital from 09.03.1999 till 28.03.1999. Afterwards he was referred to the Government hospital. He was suffering from pulmonary tuberculosis and he was taking treatment periodically till 04.06.2004. The deceased was having normal health condition till 05.06.2004. Only on 12.03.2005, he had chest pain and there was no connection between the nature of work and the cause of death. His death was a natural one and not died due to the nature of work and that the claimants are not entitled for compensation.

6.The case of the appellant herein is that the death was not due to the climatic conditions and that the death was a natural one and that there was no connection between the nature of the work and the cause of death and that the claimants are not entitled for compensation.

7.After trial, the Labour Court awarded a sum of Rs.1,46,456/- (Rupees One Lakh Forty Six Thousand Four Hundred and Fifty Six only) as compensation. Against which, the appellant



preferred this appeal.

8. On the side of the appellant, it is stated that postmortem was not conducted on the body of the deceased and that the co-employees are interested witnesses and that there was no proof to show that the deceased died on account of employment and the discharge summary reveals that he was suffering from pulmonary tuberculosis with pleural thickening in the left lung and that he was doing only field works, which did not require much physical labour and that he was just plucking the tea leaves in the estate, which could not have resulted in any stress or strain and that there was no medical evidence to attract the provision of Workmen Compensation Act and that there was no personal injury caused by any accident and that the death did not occur during the course of employment and that the death was only due to heart attack and not due to the working conditions of the employment.

9. On the side of the appellant, it is stated that the deceased took treatment from 1982 till 1984 and postmortem was not conducted and that the doctor was not examined on the side of the claimants and that the medical reports from the Primary Health Centre was not produced and that in the absence of the evidence of the Doctor, the cause of death and nature of the work could not be proved and that the burden is on the claimants to examine the Doctor.

10. On the side of the appellant, it is stated that the insurance company can disburse the amount only as per law and that the money involved is public fund. The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case **Jyothi Ademma v. Plant Engineer, Nellore and Another** reported in **(2006) 4 MLJ 154 (SC)**, wherein it is stated as follows:

"Death of employee due to heart attack - he was suffering from heart disease - his work did not involve any stress and strain - Death is not due to "accident arising out of and in the course of his employment" - Employer not liable to pay compensation.

If a workman dies as a result of disease which he was suffering from or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed on the employer."

11. The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case **Rashida Haroon Kupurade v. Divisional Manager, Oriental Insurance Co., Ltd., and others** reported in **2010 ACJ 721**, wherein it is



stated as follows:

"Arising out of and in the course of employment - heart attack - compensation - liability of employer - death of workman due to heart attack - high Court found that death of workman occurred due to heart attack and no nexus between death and accident which had occurred six months prior to death - high Court allowing appeal against the award of Commissioner exonerate insurance company but fastened liability on the employer as death occurred during the course of employment and relationship of employer and employee between insured and workman was not disputed - whether there was nexus between accident and death and employer is liable."

12. On the side of the respondents, it is stated that the death was not due to heart attack and that it was due to severe cold and chest pain. Only due to workload and due to the climatic conditions prevailing there, the deceased met with the death and the factum was proved by the evidence of P.W.1 and 2. The deceased was an estate labourer working in a hilly area where the climate will be severely cold. The area of the work and type of work clearly proves that the climatic condition will be severe and no separate evidence is necessary. The appellant did not come forward to examine the doctor and was not ready to produce the documents. Only when the deceased was on duty, he suffered chest pain and was sent for treatment. On 12.03.2005, due to ill health, the deceased went on leave. The employer admitted the same. There is no contradictory evidence on this issue. The place of work is a very remote place and going to Government hospital itself require travelling and money. Tuberculosis is not the cause of death. The O.P. Chit was marked as Ex.R3, which confirms that the deceased suffered chest pain due to climatic condition in hilly areas.

13. The learned counsel for the respondents would rely upon a judgment of this Court in the case of the **Managing Director v. Subbulakshmi and others** reported in **2011 (2) TNMAC 227**, wherein it is stated as follows:

"Deceased continuously working during night hours in chill climate condition.....Same disputed only before high Court in appeal contending that death due to heart attack had no connection with employment - failure of appellant to seriously dispute in counter, in witness box and to raise any positive stand and to adduce any contrary evidence"

14. The learned counsel for the respondents would rely upon a judgment of this Court in the case of the **Managing Director v. Subbulakshmi and others** reported in **2011 (2) TNMAC 227**, wherein it



is stated as follows:

"Even in absence of direct evidence, if the probabilities are more in favour of applicant, it is to be inferred that accident did in fact arise out of and in course of employment"

WEB COPY

15.The learned counsel for the respondents would rely upon a judgment of this Court in the case of the **Oriental Insurance Company Limited v. J. Sathyamoorthi and others** reported in **2010 (2) TNMAC 337**, wherein it is stated as follows:

"Appellant/Insurer though denied employment, no contra evidence adduced on side of Insurer"

16.The learned counsel for the respondents would rely upon a judgment of this Court in the case of **B.Govindaraju and another v. Thulasiraman** reported in **2008 (1) TNMAC 134**, wherein it is stated as follows:

"Held, findings of fact based on evidence - no material pointed out warranting reversal of factual aspects - no question of law much less substantial question of laws shown to be involved in appeal"

17.On the side of the respondents, it is stated that only on question of law, the insurance company can file an appeal. Therefore, an appeal without question of law, is not maintainable. The insurance company has nothing to say regarding the facts of the case.

18.The learned counsel for the respondents would rely upon the judgment passed by the High Court of Karnataka in the case of **Kavitha Dilip Patil v. Ananda Gnanu Patil** reported in **2004 (1) TNMAC 225**, wherein it is stated as follows:

"Insurance company cannot take up defence other than what is available under terms of policy and specified in S.149(2), MV Act even in proceedings under Workmen's Compensation Act... Insurance company cannot urge any other ground other than what is available to them under Motor Vehicles Act and even in respect of those grounds unless a substantial question of law is made out."

19.On the side of the appellant, it is stated that the respondent never admitted its liability. The death was not due to the working conditions. The burden is upon the claimants to prove the cause of death. The claimants chose not to examine the doctor. So there is no necessity for the respondents to disprove the case.



20. The learned counsel for the respondents would rely upon a judgment of this Court in the case of **T.S. Shylaja v. Oriental Insurance CO. Ltd., and another** reported in **Civil Appeal No. 51 of 2014**, wherein it is stated as follows:

"He urged that the high Court remained oblivious of the provisions of Section 30(1) of the Act which clearly stipulate that no appeal shall lie against any order of the Commissioner unless a substantial question of law fell for consideration. No such question of law arose for consideration nor was the same framed or addressed by the high Court in the course of the judgment. The reasoning given by the high Court was, according to the learned counsel, vague and based entirely on surmises and conjectures hence unsustainable in law."

21. It is stated that only the claimants made the insurance company as a party and demanded compensation from the insurance company and since the insurance company was impleaded as the party, the insurance company has the right to file the appeal.

22. It is seen that the deceased Balar was working as an Estate Labourer. His duty was to pluck tea leaves. P.W.1 and 2 deposed that Balar was an employee of the fifth respondent. He died on 24.03.2005. The case of the claimants is that the death was due to climatic conditions and due to the nature of work. The case of the appellant is that the death was a natural one and that the deceased was having pulmonary tuberculosis. Ex.R3 is the document to prove the same. The death occurred during the year 2005. Ex.R3 is an out patient card for the period from 23.06.1988 till 04.06.2004. Doctor was not examined to substantiate the details given in Ex.R3.

23. The case of the respondents is that from 05.06.2004 till 11.03.2005, the deceased was having normal health condition. So the appellant cannot claim both prior ailments and normal health conditions at the same time. As per the case of the appellant, the deceased was having normal health condition till 13.03.2005. The deceased was having chest pain on 13.03.2005 and he was continuously under treatment and he died on 24.03.2005. The respondent did not deny that the deceased was admitted in hospital on 13.03.2005 due to chest pain. The deceased was admitted as in-patient from 13.03.2005 till 19.03.2005. Naturally the climatic condition in a hilly area will be severe cold, which might have an impact upon the health of the deceased. The ailment was during the course of employment. Till his death, the deceased was in the employment of the fifth respondent.



24. In the above circumstances, the death must be due to the nature of work and due to the climatic conditions prevailing in that area. There is no dispute regarding the validity of the insurance policy. So it is decided that the claimants are entitled for compensation for the death of Balar.

25. In view of the above circumstances, it is decided that there is nothing sufficient enough to interfere in the order passed by the Labour Court. Hence, this Civil Miscellaneous Appeal is dismissed and the order passed in W.C.No.50 of 2005 dated 18.09.2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli is confirmed. No Costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Tirunelveli.

+1 CC to M/s.C.JAWAHAR RAVINDRAN, Advocate (SR-8701[F] dated 27/02/2020)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-8851[F] dated 27/02/2020)

+1 CC to M/s.S.SRINIVASARAGAVAN, Advocate (SR-8545[F] dated 26/02/2020)

C.M.A. (MD) No. 305 of 2008
26.02.2020

VR (CO)

TR (20.03.2020) 7P 5C

<https://hcservices.ecourts.gov.in/hcservices/>