

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.2658 OF 2006

Manager,
United India Insurance Company Limited,
Motor Third Party Claims Division,
38, Anna Salai, Chennai.

.. Appellant

Vs.

1.Rajeswari

2.Kasthuri

3.Bhavani

4.Minor.Krishnamoorthy

5.Minor.Elangovan

6.M/s.Anand Transport,
No.1, 9th Street,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

..Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, against the award and decree dated 13.03.2006, made in W.C.No.341 of 2004, on the file of the Commissioner, Workmen Compensation Tribunal, DCL-II, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.S.Jayaganesan for R6

J U D G M E N T

The appellant herein is the Insurance Company against whom and another M/s.Anand Transport, legal heirs of the deceased Periyathambi filed a claim application claiming compensation for the death of said Periyathambi, who was employed as a driver under the 6th respondent and died while he was employed in the

course of his employment on 20.11.2002 as a driver. Both employer and Insurance company contested the case. After full trial, the Commissioner of Labour has preferred this appeal.

2. Point for Consideration:

"Whether the Commissioner of Labour failed to appreciate the fact that the death was not arising out of any accident in the course of his employment under the 6th respondent and erroneously directed the Insurance Company to pay the compensation."

3. Facts reveal that the 6th respondent herein owned water tanker lorry bearing registration No.TN-07W-8230, which was validly insured with this appellant and the same was driven by Periyathambi as a driver on 20.11.2002, the said Periyathambi after filling water had brought the water tanker lorry to Chennai Harbour and the said water tanker lorry was stationed to let the water out. At about 04.00 p.m., when the said Periyathambi was opening the tap at the top of the water tanker lorry to let out the water for supplying, he had a massive heart attack and died due to the same. As per the postmortem report, it has been held that the death is due to "acute myocardial failure due to coronary artery disease". So the legal heirs/respondents 1 to 5 herein, filed the application, claiming compensation. In spite of the objection raised by the Insurance Company and the owner, the Commissioner of Labour awarded the compensation.

4. The learned counsel for the appellant submits that the death has not occurred to the deceased Periyathambi, due to stress and strain arising out of his employment and in the natural way, he suffered with the heart attack. So his death was not occurred in the course of his employment. Thereby, the 6th respondent as well as this appellant not liable to pay compensation.

5. The learned counsel for the respondents 1 to 5 submits that the nature of the work assigned to the said Periyathambi was to fill the water and brought the water tanker lorry to Chennai Harbour and the said water tanker lorry was stationed to let the water out. Accordingly, on 20.11.2002, while he was driving the water tanker lorry inside the harbour in order to supply the water and when he attempted to open the water tap, at the time he fell down and died to the massive heart attack. Hence, the learned counsel contended that he suffered heart attack, while he was working as a driver. This fact has not been denied by the owner/6th respondent herein.

6. During the cross examination, RW.1/Staff of the 6th respondent admits that on "20.11.2002 சம்பவம் நடந்தது என்றும், அன்று மனுதாரர் பணியிலிருந்தார் என்றால் சரி என்றும்,". The FIR was lodged based on the statement of RW.1. The Said Periyathambi suffered with Cardiac Arrest, while he was tapping out the water from tanker lorry in which, he was employed as a driver.

7. There is no evidence on the side of the 6th respondent that the said Periyathambi already suffered with heart disease, in fact naturally driving work is accompanied with stress and strain. But we cannot give specific measurement for stress and strain and it vary to person to person. Facts reveal that while he was unloaded the water in the tank lorry, during the course of his employment he sustained with cardiac arrest. The fact is admitted by the Commissioner of Labour, since the vehicle belonged to the 6th respondent insured with this appellant and Commissioner of Labour rightly fixed the liability on this appellant. Accordingly, the substantial question of law is answered.

8. As discussed above, the appellant is liable to pay the compensation as ordered by the Court below and the order of Commissioner of Labour is confirmed. Accordingly, there is no merits in this appeal. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner , Work Men Compensation Tribunal,
DCL-II, Chennai.

2.The Section Officer, VR Section, High Court, Chennai.

+1cc to M/s.S.Arunkumar, Advocate, SR.No.13834
+1cc to Mr.K.S.Jeyaganeshan, Advocate, SR.No.13602

C.M.A.No.2658 of 2006

AD(CO)
KKV/23/03/2021