

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.100 of 2015

1.N.Latha

2.Minor.M.Gowtham

3.Minor.N.Aahash

4.Minor.N.Pratap

5.S.Kamala

... Appellants

Minors 2 to 4 rep.by their
mother/next friend N.Latha

vs.

1.The Management,
Cargo Express,
T.V.Sami Road,
R.S.Puram West,
Coimbatore-2.

2.L.Arumugam

3.The Manager,
United India Insurance Company Ltd.,
K.P.S.Kottur Building,
36, Katpadi Road,
Gandhi Nagar,
Vellore-632 006,
Vellore District.

4.The Management,
Hindustan Cotton Mill,
Mettupalayam Road,
Narasimmanaickenpalayam,
Coimbatore.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the Fair and Final Order dated 03.06.2010 passed by the Deputy Commissioner of Labour/Commissioner of Workmen's Compensation, Coimbatore in W.C.No.29 of 2008.

For Appellants : Mr.P.Meenakshi
for Mr.N.Manokaran

For Respondent :R1-No such Addressee
Mr.V.Parivallal for R2
Mr.I.Malar for R3
Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed for R4

O R D E R

The award dated 03.06.2010 passed in W.C.No.29 of 2008 is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial questions of law raised in the appeal reads as under:

a) Whether the learned Commissioner has committed an error in exonerating the respondents 2 to 4 merely on the basis of some stray sentence in the evidences of P.W.2 and P.W.3 in the absence of any other legal evidence to arrive such conclusion?

b)whether the learned Commissioner is correct in law in exonerating the insurer and insured even after answering both the issues in favour of the claimants, particularly in the absence of any specific issue for adjudication to exonerate the respondents 2 to 4?

3. The substantial questions of law raised are relatable to the facts of the case which were already adjudicated elaborately by the Deputy Commissioner of Labour. Thus, the appellant has not raised any acceptable substantial questions of law so as to entertain further adjudication. However, the fact remains that the petition was filed by the appellants under Section 10 of the Workmen's Compensation Act seeking compensation on the ground that on 10.03.2007, the husband of the first appellant/Late.Nagaraj, had gone to his work place. As per the instructions of the first respondent/The Management, Cargo Express, the deceased was performed his duties in a lorry bearing Registration No.TNG-3309 owned by the second respondent. While loading the bags, he suffered heart attack and died subsequently. The Deputy Commissioner of Labour adjudicated the issues and the deceased/workman was an employee of the first respondent/Management Cargo Express. It is an admitted fact that

the lorry, in which the deceased was working, belonging to the second respondent. The third respondent is the Insurance Company. Under these circumstances, the Deputy Commissioner of Labour made a finding that due to heavy work, the deceased/Nagaraj sustained stress and strain, which resulted heart attack and died. Accordingly, fixed the liability on the first respondent/Management, who is the employer of the deceased/workman. It is made clear that the third respondent/Insurance company cannot be held liable as there was no accident established. No F.I.R was filed. Thus, there is no coverage under the policy and the Deputy Commissioner of Labour has rightly proceeded against the employer in the matter of fixing the liability.

4. In order to establish stress and strain, it is to be established by the claimants through medical records. However, no such medical records are produced in the present case and mere performance of work is not a ground to arrive a conclusion that the employee suffered heart attack on account of stress and strain. Mere performance of work is insufficient. Beyond that, it is to be established that the workman was not suffered from any other diseases including heart disease or block in blood vessels etc. Therefore, in the event of unnatural death, the onus lies on the claimants to establish the same. In all other circumstances, a mere heart attack is to be construed as natural death and cannot be construed as a death of stress and strain. Work performance in every place, they have some stress and strain. Such stress and strain alone is not enough to fix the liability. The said stress and strain must be established with reference to the medical records and by filing documents and other evidences. In the present case, no such evidence has been filed and no F.I.R has been filed. The medical records are also not filed. The Deputy Commissioner of Labour merely arrived a conclusion that due to lifting of heavy bags, the workman sustained stress and strain and suffered heart attack. Such a finding is insufficient to shift the responsibility on the Insurance Company. However, the Deputy Commissioner of Labour has rightly fixed the liability on the employer/first respondent, who alone is responsible if at all for over-working of the workman in the particular spot or otherwise. Therefore, the Deputy Commissioner of Labour has rightly fixed the liability on the first respondent and there is no reason whatsoever for the claimants to file an appeal despite the fact that the compensation was awarded by fixing the liability on the first respondent/employer who is capable of settling the compensation.

5. This being the facts and circumstances, the award dated 03.06.2010 passed in W.C.No.29 of 2008 stands confirmed and consequently, the Civil Miscellaneous Appeal stands dismissed.

No costs. The first respondent is directed to deposit the entire award amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the appellants/claimants are permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

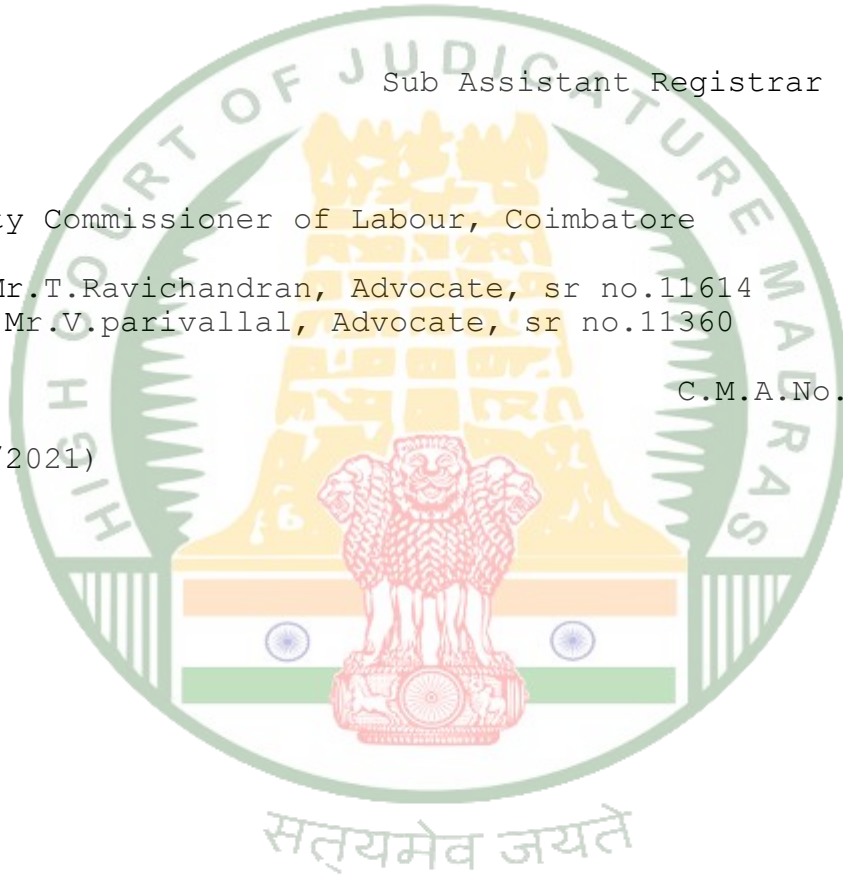
The Deputy Commissioner of Labour, Coimbatore

+1cc to Mr.T.Ravichandran, Advocate, sr no.11614

+2ccs to Mr.V.parivallal, Advocate, sr no.11360

C.M.A.No.100 of 2015

PPA (CO)
RMP (16/03/2021)



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