

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2021
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2926 of 2013

1.Smt.Shanthi
2.Sri Sivaji

..Appellants/Petitioners

Vs.

1.Smt.Latha Udyakumar

2.The Divisional Manager,
United India Insurance Company Ltd.,
Katpadi Road,
T.K.M.Complex,
Vellore.

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923, against the order dated 31.01.2013, made in W.C.No.227 of 2007 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner for Labour-I, Chennai.

For Appellants : Mr.C.Prabakaran

For Respondents : No appearance

J U D G M E N T

The award dated 31.01.2013, made in W.C.No.227 of 2007, is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised in the present appeal by the appellants are that whether the Deputy Commissioner of Labour is correct in holding that the claimants have not proved the employee employer relationship between the deceased and the first respondent? Whether the finding of the award that the claimants have not proved the death of the deceased during the course of employment? Whether there is any impediment for the Insurance Company to settle the claims in favour of the claimants. All the substantial questions of law raised are related to the factual aspects and there is no valid question of law raised in the present appeal.

3. However, the fact remains that on 02.03.2006 at about 11.30 p.m. one S.Manikandan was riding from Ambur to Chennai in a car as a driver. It is stated that he was driving a car during the course of the employment. The car got repair at Villivakkam and the said driver of the car went to purchase spare parts in

two wheeler in the nearby spare parts shop at Villivakkam. While driving in two wheeler, he dashed in an electrical light post standing in the 7th Street, Second Main Road, Jaganatha Nagar and sustained fatal injuries and he was admitted in hospital and died subsequently. The parents of the deceased Manikandan filed an application seeking compensation.

4. The Deputy Commissioner of Labour adjudicated the issue on the basis of the documents and evidence and the findings of the Deputy Commissioner reveals that the car was insured with the second respondent United India Insurance Company. The car was not met with an accident at all. As per the application, the car was under repair and the deceased Manikandan has taken a two wheeler and went to a spare parts shop to purchase certain parts. While riding the two wheeler, he dashed in the electrical light post and sustained fatal injuries. Therefore, it is to be established that whether the Insurance Company is liable to pay the compensation based on the policy. The factum regarding the accident was established. The policy was in force. However, the insured car did not meet with an accident at all. The deceased Manikandan died while riding the two wheeler which was not insured in the second respondent Insurance Company.

5. This being the factum established, the liability to pay compensation cannot be fixed on the Insurance Company. In fact, the liability is to be fixed on the employer as the accident occurred during the course of the employment, when the employee has gone to purchase spare parts to the car. Thus, the employer is liable to pay compensation, if at all the employee employer relationship is established and the accident occurred during the course of the employment. However, the Insurance Company cannot be liable to pay compensation. The Deputy Commissioner of Labour has arrived at the finding that even the employee employer relationship was also not established.

6. This apart, the insured car did not meet with an accident. This being the factum established, there is no infirmity or perversity as such in respect of the award passed as well as the reasonings furnished in the award.

7. Thus, the award dated 31.01.2013, made in W.C.No.227 of 2007 stands confirmed and C.M.A.No.2926 of 2013 stands dismissed. No costs.

Sd/-

Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

To

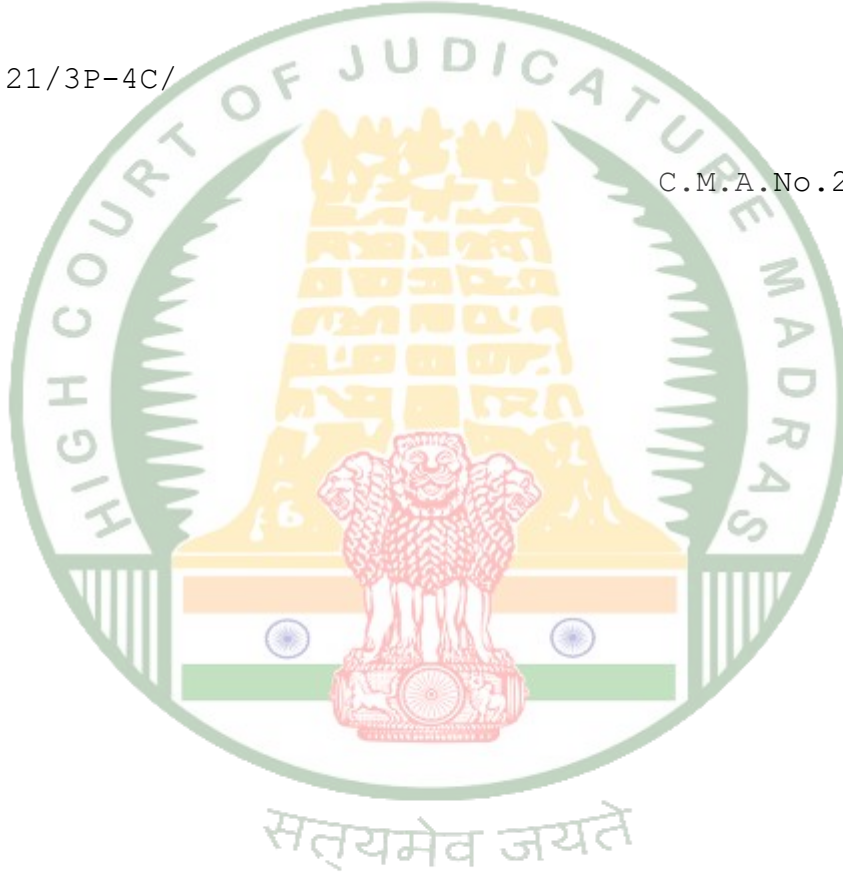
The Commissioner for Workmen's Compensation and
Deputy Commissioner for Labour-I,
Chennai.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+lcc to Mr.C.Prabakaran, Advocate SR.NO.3685

AKM/05.03.21/3P-4C/

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