IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2113 of 2016
and
C.M.P.No.15287 of 2016

M/s.United India Assurance
Company Limited,
No.134, 'Sillingi Building',
Greams Road,
Chennai - 600 006. .. Appellant

Vs.

1. Tmt.J.Chithra @ Mary Jeyachithra

2. Minor J.Arulmozhi
Rep.by her Mother
Tmt.J.Chithra @ Mary Jeyachithra

3. Minor.J.Arulnambi
Rep.by his mother
Tmt.J.Chithra @ Mary Jeyachithra

4. Thiru.Joseph

5. Tmt.Jeyamani

6. Thiru.N.Dayalan .. Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award dated 13th July 2016, (received on 01.08.2016) passed by the Learned Commissioner for Employees Compensation (Deputy Commissioner of Labour-I), at Chennai in E.C.No.62 of 2015

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.K.Suryanarayanan, for R1 to R5
R6 -Door Locked

J U D G M E N T

The Award dated 13.07.2016 passed in E.C.No.62 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The United India Insurance company Limited is the appellant and the Substantial question of law raised by the appellant reads as under:

> "1. Whether the liability saddled on the Appellant can be sustained, when the findings of the Learned Deputy Commissioner that 'injuries were sustained in an accident that occurred on 17.03.2015 in the course of and out of employment', are inconsistent and contrary to the Claim Petition and Ex.P2 Postmortem Report.
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> 2. When the death of Late.Jaikar Samuel was only due to 'Coronary heart disease' as per Ex.P2 Postmortem Report, can the Claim Petition be sustained on the ground that it occurred due to an alleged accident in the course of and arose 'OUT OF EMPLOYMENT' under the VI Respondent?
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> 3. When the VI Respondent had failed to report to the Learned Deputy Commissioner of Labour regarding the death of his alleged employee, due to an accident in the course of and out of his employment, in terms of Section 10B of the Employees Compensation Act, 1923, and to the Appellant herein in terms of the conditions stipulated in the Policy of insurance, can the admission regarding employment be considered as true and genuine?
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> 4. Whether the admission made by the VI respondent in the Counter statement regarding employment of Late.Jaikar Samuel as an 'Autorickshaw driver' can be considered as true, genuine and bonafide and not an act of connivance to saddle liability on the Appellant, when the same is not supported by any documentary evidence?"

3. The learned counsel for the appellant mainly contended that liability has been erroneously fixed on the Insurance company by the Deputy Commissioner of Labour. The deceased died due to Coronary heart disease as per Ex.P2/Postmortem report. However, the Claim Petition was filed, stating that the deceased sustained grievous multiple head injuries and died. Thus, the Deputy Commissioner of Labour ought to have considered the fact that the claimants approached the Court with unclean hands and

further, the death occurred due to Coronary heart disease, a block in the blood vessel, which is a natural death and cannot be construed as an accident and therefore, the award of compensation is perverse. As far as the accident is concerned, it occurred when the deceased was out of employment. Even the 6th respondent/owner of the vehicle had failed to report the fact that the death of his alleged employee, due to an accident in the course of and out of his employment in terms of Section 10 B of the Employees Compensation Act.

4. The 6th respondent in W.C. Proceedings, stated that on 17.03.2015, while the deceased was driving his Autorickshaw, bearing Reg.No.TN-05-AD-8175. On proceeding Arumbakkam Valluvar Salai, Near Door No.2/36 and he lost control, as a result of which he hit against the Door No.2/36 and died and the Autorickshaw also suffered damages.

5. Relying on the said facts and circumstances, the learned counsel for the appellant reiterated that the report on Viscera sent for Chemical analysis on 09.04.2015 also reveals that there was no serious head injuries as stated by the claimants in their petition and it was a case of death or due to heart disease. When there was no accident at all and the deceased on account of Coronary heart disease, just hit in front of a house and died instantly, there is no reason whatsoever to fix liability on the Insurance company. When the accident itself was not established and the factual circumstances also reveals that the deceased died due to Coronary heart disease, the liability was erroneously fixed on the Insurance company by the Deputy Commissioner of Labour.

6. The learned counsel for the appellant contended that there is no evidence to establish that an accident took place. It was further not established that the said incident took place during the course of employment. Further, the claimants have provided false informations in their Claim Petitions in order to get compensation in an illegal manner and therefore, the order of the Deputy Commissioner is liable to be set aside.

7. The learned counsel appearing on behalf of the respondent claimants objected the said contention by stating that the appeal itself is not maintainable. The appellant / Insurance company had not deposited the award amount in entirety as mandated under Section 30 of the Employees Compensation Act. The learned counsel for the claimants is of an opinion that the Auto dashed in front of the Door of a residence and due to the shock, the deceased died and therefore, it is a case of an accident and thus, there is no infirmity as such in respect of the award passed by the Deputy Commissioner of Labour. In view of the fact that the award amount has not been deposited by the appellant,

the appeal is liable to be dismissed in limini. Section 30 proviso clause of the Employees Compensation Act enumerates that "no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against." Therefore, it is unambiguous that the award amount is to be deposited as ordered by the Deputy Commissioner of Labour.

8. In support of the contentions regarding the maintainability of the appeal for non-deposit of the award amount, the learned counsel for the respondents/claimants referred a judgment in the case of Oriental Insurance Co. Ltd., Chennai-108 Vs. R. Mahalingam, reported in (2012) 2 TNMAC 750 and the relevant paragraphs are extracted hereunder:

> "14. As has been stated herein above, Section 30 provides for an appeal against certain categories of orders passed by the Labour Commissioner. Sub-clause (a) of sub-section (1) deals with an Appeal against an order awarding a lump sum compensation either in the case of death or injury. The Third Proviso under Section 30 stipulates that no Appeal by an employer under clause (a) shall lie, unless the Memorandum of Appeal is accompanied by a certificate issued by the Commissioner to the effect that the Appellant has deposited with him the amount payable under the order appealed against.
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> 19. In the present case, the award has been passed on 30.5.2003. Admittedly, the principal amount of Rs. 2,99,491/- has been deposited by way of cheque dated 13.8.2003 bearing No. 094174 drawn on State Bank of Travancore with a covering note dated 18.8.2003 which is acknowledged by the Labour Deputy Commissioner on 20.8.2003. Even according to the Insurance Company, they have received the order on 18.7.2003 and they ought to have deposited within a period of 30 days i.e. on 18.8.2003. It is not in dispute that only principal amount of Rs. 2,99,491/- alone has been deposited by way of cheque and the said cover containing the cheque had been received only on 20.8.2003 as could be noticed from the endorsement found on the cover. That apart, the Appeal is not accompanied by a certificate by the Commissioner to the effect that the Appellant/Insurance-Company has deposited with him the amount payable under the order appealed against. Therefore, the Appellant has failed to deposit the interest that has been ordered by the Commissioner. I

am in entire agreement with the view taken by the Division Bench of the Kerala High Court in New India Assurance Co. Limited v. Biju, 2011 (2) TN MAC 48 (DB); and V.K. Raghavan v. Commissioner for Workmen's Compensation, 2008 ACJ 235, that the words 'amount payable under the order appealed against' in the Third Proviso will include not only the principal amount of compensation, but also interest as well.

20. Now the question is as to whether the deposit of cheque is sufficient compliance to Third Proviso referred to above. My opinion is that it is not sufficient compliance. I gain strength to my view from the decision rendered in J & K SFC v. Ghulam Mohd., 1993 ACJ 736 (J&K), wherein it has been held thus:

"It has been laid down that a cheque, bank draft, cash in deposit or any other kind of security is no substitute for the deposit of the amount with the Commissioner under the Act and the Memo of Appeal accompanied by a certificate of the Commissioner to that effect. The Court held that allowing any mode of deposit of award money other than one laid down under Section 30(1) Third Proviso would amount to rewriting law."

21. Appeal in hand is not accompanied by the requisite certificate and therefore, instead of certificate, a letter addressed to the Commissioner enclosing a cheque accompanying the Memorandum of appeal cannot be termed to be the compliance to the requirement of Third Proviso to Section 30(1) of the Act, 1923. The Insurance-Company/Appellant having not deposited the interest accrued on its failure to deposit the amount within 30 days from the date of receipt of order and as the Memorandum of Appeal is not accompanied by a certificate by the Commissioner to the effect that the Appellant-Insurance Company has deposited with him the amount payable under the order appealed against is not sufficient compliance of the requirement of Third Proviso to Section 30(1) of the Act, 1923 and as such I hold that the Appeal filed by the Insurance Company is not maintainable."

9. In the present case, the learned counsel for the appellant states that the award amount has already been deposited, the said statement is disputed by the learned counsel for the claimants on the ground that the interest portion of the award amount has not been deposited. In this regard, the Court

has to consider whether the award amount has been deposited as per the award or not.

10. Let us consider the award passed by the Deputy Commissioner of Labour in E.C.No.62 of 2015. The award reveals that the compensation of Rs.7,93,240/- was awarded and the appellant/United India Assurance company Limited is directed to deposit the award amount within 30 days by way of Demand Draft in favour of Deputy Commissioner of Labour-I, Chennai-6, failing which, on expiry of 30 days, the said award amount is to be deposited along with the interest at the rate of 12% per annum. Thus, it is clear that if the award amount of Rs.7,93,240/- is not deposited within 30 days, then alone, the question of payment of interest at the rate of 12% would arise and not otherwise.

11. It is contended by the appellant that the award amount of RS.7,93,240/- was deposited before the expiry of 30 days as ordered by the Deputy Commissioner of Labour and therefore, the condition imposed for payment of interest would be applicable at all. In view of the fact that the deposit amount has already been made and the appeal was numbered, there is no reason to raise this ground regarding the payment of interest.

12. It is not disputed by the respondent that the award amount of Rs.7,93,240/- was not deposited. When it is not disputed and the dispute is raised only with reference to the payment of interest, this Court is of an opinion that the same does not arise as the award is very clear. Thus, the appellant has deposited the award amount as per the award passed and there is no infirmity and thus, the conditions stipulated in the proviso clause to Section 30 has been complied with.

13. It is needless to state that the Hon'ble Supreme Court of India in many number of judgments, held that the award amount in entirety is to be deposited for the purpose of entertaining the appeal against the award. The Statute also provides that the certificate is to be obtained for the purpose of numbering the appeal under Section 30 of the Act. However, the Court has to verify whether the award amount has been deposited as directed in the award. One can presume payment of interest along with the award passed unless there is a specific order in the award. In the present case, the Award amount of Rs.7,93,240/- was directed to be paid within a period of 30 days and only in the event of failure, interest is to be paid beyond the period of 30 days, However, the appellant in the present case, deposited the award amount within a period of 30 days and therefore, the appeal is numbered in accordance with the provisions of the Act and there is no infirmity as such.

14. As far as the merits are concerned, the documents as well as the evidences placed by the respective parties reveal that the deceased on account of Coronary heart disease, dashed in front of a house and died. He was not died on account of severe head injuries. The Postmortem report also states that there was no serious head injury as stated in the Claim Petition. Thus, the death occurred on account of the block in the blood vessels, more specifically, Coronary heart disease and therefore, the death occurred on account of disease, which is already within and therefore, the said incident cannot be construed as an accident, so as to fix liability on the Insurance company.

15. It is admitted before this Court that 50% of the award amount had already been withdrawn by the claimants pursuant to the interim order passed by this Court. In view of the fact that the accident was not established and further, the respondent/claimants had not approached the Court with clean hands, the liability cannot be fixed on the appellant/Insurance company. Thus, the final award dated 13.07.2016 passed in E.C.No.62 of 2015 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.2113 of 2016 stands allowed. The 50% of the award amount already in the deposit of the Deputy Commissioner of Labour is directed to be repaid to the appellant/Insurance company with accrued interest. The Insurance company is directed to file an appropriate application for such withdrawal of the balance award amount of 50% with accrued interest and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

The Learned Commissioner for Employees Compensation
(Deputy Commissioner of Labour-I), Chennai.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.No.16278
+1cc to Mr.K.Suryanarayanan, Advocate Sr.No.15938

C.M.A.No.2113 of 2016

SMI(CO)
NR/17/04/2021
CS/29/04/2021