

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.808 of 2016
and C.M.P.No.6495 of 2016

M/s.United India Insurance Company Limited,
Having Office,
Sri Saravana Complex, 1st Floor,
No.18/116, Mettupalayam Road,
Thudiyalur,
Coimbatore - 641 034.

.. Appellant

Vs.

1.S.Sundarraaj
2.S.Josbin
3.G.Selvin
4.C.Gunasekaran

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, against the judgment passed in W.C.No.40 of 2014, dated 17.12.2015, on the file of the Learned Assistant Commissioner -I for Workmen Compensation, Coimbatore.

For Appellant : Mr.J.Chandran

For Respondents : Mr.J.Balachandran for R1 and R2
No Appearance for R3 and R4

J U D G M E N T

The appellant herein is the 3rd respondent in W.C.No.40 of 2014, filed by the first respondent/petitioner against the appellant along with other respondents claiming compensation for the fatal injury of his son, who was employed as a cleaner in the Auto belongs to the 4th respondent herein.

2. The respondent has also contested the petition. After full trial, the Commissioner of Labour awarded compensation directing the 3rd respondent to pay the compensation to the petitioners. Aggrieved by that the 3rd respondent/Insurance Company preferred his appeal.

3. Points for consideration:

1. Whether the Commissioner of Labour has erred in holding that the son viz., Praveen was employed as a cleaner and died during the course of his employment under the 3rd respondent/owner, thereby, the Insurance Company is liable to pay the compensation.?

2. Whether the Commissioner of Labour has, without appreciating the seating capacity of the vehicle, fixed the liability of the owner of the vehicle as well as the Insurance Company/Appellant.?

4. The facts reveal that son of the first and second respondent herein viz., Praveen was employed as a cleaner in a Bajaj Auto bearing registration No. TN-37AH-6463 belonging to the 4th respondent herein, in order to avoid the lorry, which came in the opposite direction in a negligent manner. The driver of the auto suddenly turned the vehicle to the East side, thereby the deceased has fallen down and sustained grievous injuries and died on the spot. The accident had occurred during the course of his employment, the parents of the deceased filed an application claiming compensation for the fatal death of his son.

5. Before the Commissioner of Labour, the Insurance Company contested the case and the owner and the driver of the vehicle remained ex-parte. The contention of the Insurance Company is that the seating capacity of the vehicle is one person, but at the time of the accident along with driver, the deceased was also travelled, which is violation of the policy condition. so they are not liable to pay the compensation, even if the accident is proved.

6. On perusal of the records, the accident as well as the employer-employee relationship was proved and the manner of the accident was not denied by the driver as well as the owner/respondents 3 and 4 herein.

7. It is also admitted fact that at the time of the accident, the auto involved in the accident, was insured with the appellant insurance company. As per the policy rules, the seating capacity is one person. But premium was paid by the owner regularly.

8. The Madras High Court relied on a decision reported in 2009 ACJ 2855 (Branch Manager, National Insurance Company Limited Vs. Venkatesan and others,

wherein, it has been observed as follows:

18. When premium has been paid so as to meet the requirements of workmen's compensation Act, it is not open to the insurance company to raise the defence which are available to it under Motor Vehicles Act pleading exoneration of its liability on the ground of breach of conditions of policy.

9. As per the ratio laid down in the above decision, the appellant is not entitled to raise the defence, which are available under the Motor Vehicle Act, since the vehicle was insured under the Workmen policy.

10. Considering the facts and circumstances of the case, the appellant is directed to pay the award amount with interest as ordered by the Commissioner of Labour and entitled to recover the same from the owner of the vehicle.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner I,
For Workmen Compensation,
Coimbatore.

+cc to Mr.J.Chandran, Advocate, SR.No.21138/21

C.M.A.No.808 of 2016

SMI (CO)
baf 03/05/2021

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