

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.974 of 2018
and
C.M.P.No.7919 of 2018

M/s.United India Insurance
Company Limited,
No.70, N.S.C.Bose Road,
III Floor, Sowcarpet,
Chennai - 600 079.

..Appellant

Vs.

Thiru.G.Karunanithi (since died)

1.Thirumathi.K.Selvanayagi
2.Minor.K.Barath
3.Minor.K.Nandakumar
(Minors 2 & 3 rep.by mother
& guardian Mrs.K.Selvanayagi)
4.Thiru.N.Vijayakumar

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award dated 01st September 2017, (received on 17.02.2018) passed by the Learned Commissioner for Employees Compensation (Deputy Commissioner of Labour-I), at Chennai in E.C.No.62 of 2013.

For Appellant : Mr.J.Michael Visuvasam

For Respondents: Mr.P.Chinnaraj

[For R1 to R3]

R4 - Not Ready in Notice

J U D G M E N T

The Award dated 01.09.2017 passed in E.C.No.62 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial question of law mainly raised, which reads as under:

"4. Whether the findings of the Learned Deputy Commissioner of Labour that the death of Late.Karunanithi, was only due to the alleged employment injuries, without considering and appreciating the genuineness of the documents marked and the credibility of evidence placed on record can be sustained?"

3. The learned counsel appearing on behalf of the appellant / Insurance company contended that the death of the workman is no way relatable to the injury sustained during the alleged accident. Even as per the petition filed by the workman under Section 10 of the Workmen Compensation Act, it is stated that on 19.07.2012 at 12.40 hrs, the applicant drew the share auto bearing Registration No.TN 05 P 2671 in E.H.Road from North to South in front of E.B Quarters, another Auto bearing Registration No.TN 03 d 8949, driven in a rash and negligent manner came from South and hit the workman and his auto and in consequence of which the auto of the workman capsized.

4. It is stated that the workman sustained dislocation of right shoulder, severe injury at his right knee, severe internal injury at his right side chest and also also injuries at his head. He took treatment in Government General Hospital, Chennai as inpatient from 19.07.2012 to 20.07.2012 and thereafter, continued his treatment as inpatient. A Criminal Case was registered in Crime No.284/P3/2012.

5. The learned counsel for the appellant reiterated the workman was admitted as inpatient for one day in a hospital and thereafter, discharged. Thus, the nature of the injuries are not so serious or fatal connectable to the death, which occurred for a lapse of more than two years from the date of accident.

6. The workman died on 31.03.2014 after a lapse of about 20 months and 13 days from the date of accident. In between, he was performing his duties and responsibilities. It is not established that he was taking treatment through out for about 20 months. Contrarily, even as per the application filed by the workman, it is stated that he was admitted in Government General Hospital for one day, took treatment and thereafter discharged. Thus, the death is not connected with the accident and further, the Doctors were not examined during the course of enquiry before the Deputy Commissioner of Labour. The nature of injuries sustained are minor and it was treated in one day by the Doctors at General Government Hospital and thereafter, there is no proof to establish that he continued his treatment till his death in the year 2014, after a lapse of 20 months from the date of accident.

7. The policy is not disputed. Coverage is also not disputed. The accident was registered by the Traffic Investigation Wing Police and the factum regarding the accident was also established. However, the quantum of Award granted by the Deputy Commissioner of Labour, considering the death of the deceased alone is questioned by the Appellant/Insurance company and this Court is of the opinion that the respondents/claimants could not able to establish that the death occurred is relatable to the accident took place on 19.07.2012. This apart, the Disability was not assessed nor any such Disability Certificate was marked as document on the part of the claimants. It is pertinent to note that no Post-mortem Certificate or other Medical Records were produced, enabling the Court to arrive a conclusion that the workman sustained disability as well as the subsequent death due to the accident. In the absence of any medical records to establish the disability, the compensation cannot be granted with reference to the terms and conditions of the Insurance Policy.

8. Perusal of the Award reveals that the Disability percentage has not been assessed. Further, the Deputy Commissioner of Labour treated the case as a death case and the probability of death with reference to the accident was also not discussed. In the absence of any material evidence to establish that the death occurred due to the accident, more specifically, after a lapse of 20 months cannot be accepted. If at all, the death occurred due to the accident, the same is to be established with an acceptable evidence and in the present case, absolutely there is no evidence to establish that the death is connectable to the alleged accident, which took place in the year 2012. Mere presumption regarding a death is impermissible, in view of the fact that the death occurred after a lapse of about 20 months. Such an inference is possible to be drawn in a case, where the death occurs within two or three days from the date of accident on account of certain internal injuries or otherwise. However, in the present case, the workman took treatment for one day as inpatient in a Government General Hospital and thereafter, he died after a lapse of 20 months in the year 2014 and the gap between the accident and the death was not explained nor any document filed to prove that the accident is the cause for the death.

9. The Deputy Commissioner of Labour relied on the document in Ex.P7 / Certificate issued by J.K.Clinic by one Dr.Muralidaran. The cause of the death stated as "patient expired on 31.03.2014 due to septicemic shock. However, there is no other Medical records available to support such a findings of the Doctor of a Private Clinic. When the workman took treatment in a Government General Hospital in the year 2012, those Medical Records were not produced. Contrarily, the Certificate issued by

a Private Clinic in the year 2015 is produced, which cannot be trusted upon, in the absence of any supporting document to establish that the death occurred due to continuous treatment for about 20 months from the date of accident.

10. This being the facts and circumstances, the Deputy Commissioner of labour proceeded with the case on certain perceptions, which is impermissible and with reference to the death, there must be a definite proof to establish that the death occurred due to the accident and only in such circumstances, the liability can be fixed on the Insurance company and not otherwise.

11. In this view of the matter, the Award dated 01.09.2017 passed in E.C.No.62 of 2013 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.974 of 2018 stands allowed. The appellant / Insurance company is directed to withdraw the deposited amount with accrued interest by filing an appropriate application and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 11795.

C.M.A.No.974 of 2018

PM(CO)
SP(16/03/2021)

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