

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

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

C.M.A.No.307 of 2017 and

C.M.P.No.2227 of 2017

National Insurance Company Limited,
Branch Office, 1st Floor,
R.V.R.Building,
Karamadai Road,
Mettupalayam. ...Appellant

Vs.

1.Thirumathi Poongodi

2.Minor K.Shalaini

3.Thirumathi Mariammal

4.Thiru R.Karuppuswamy ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the order passed on 24.10.2016 in W.C.No.26 of 2014 on the file of the Workmen Commissioner and Deputy Commissioner for Labour, Coimbatore-18.

For Appellant : Ms.N.B.Surekha

For Respondents : Not ready in notice for
RR1 to 3

: R4- No appearance

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J U D G M E N T

The award dated 24.10.2016 passed in W.C.No.26 of 2014 is under challenge in the present civil miscellaneous appeal.

2. The substantial question of law raised in the present appeal is that whether the Deputy Commissioner of Labour is right in shifting the burden of proof that the deceased did not hold driving licence by marking a negative document. The other question of law is that whether on assumption, the relationship of the employee employer could be decided or not.

3. The legal heirs of the deceased driver, were the claimants filed application under Section 22 of the Workmen Compensation Act. The deceased driver was employed by the fourth respondent Karuppuswamy and the vehicle met with an accident and the driver sustained grievous injury and died subsequently.

4. The Commissioner of workmen compensation adjudicated the issues with reference to the documents and evidence produced by the respective parties to the application and awarded compensation of Rs.7,47,600/-. Challenging the said award, the Insurance Company preferred the present appeal.

5. The main question raised in the present appeal is that in the absence of driving licence whether the Commissioner of workmen compensation is right in passing award in favour of the claimants. Perusal of the finding of the award reveals that the deceased driver was not possessing any driving licence at all. The Tribunal in clear terms arrived at the conclusion that the claimants could not able to establish that the deceased driver possessing driving licence at the time of the accident. Then such a finding is arrived by the Deputy Commissioner of Labour, there is no reason to grant award in view of the fact that the violation in this regard is a disqualification for getting compensation. In other words, as per the terms and conditions of the insurance policy, the driver must have valid driving licence. In the absence of any licence, the compensation cannot be granted.

6. In the present case, the appellant Insurance Company could able to establish that the driver who met with an accident and subsequently died, was not possessing driving licence at all. The claimants could not able to establish that the deceased driver was possessing a driving licence.

7. This being the factum established, this Court is of the opinion that the Deputy Commissioner of Labour committed an error in fixing the liability on the Insurance Company to pay the compensation. Even in the recent Hon'ble Supreme Court judgment in the case of Beli ram Vs.

Rajinder Kumar & Anr. decided on 23.09.2020, held as follows:

"21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident.

The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

"18. When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section- 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence.

He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed.

Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

22. We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the Hem Rajll case.

23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck.

The appellant has to, thus, bear responsibility

and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver.

We are, however, dealing with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings. The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case.

The relevant provision reads as under:

"3. Employer's liability for compensation.- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--(i) the workman having been at the time thereof under the influence of drink or drugs, or(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming

Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person."

8. In view of the fact that the deceased driver was not possessing the driving licence, the liability is to be shifted to the owner of the vehicle instead of the appellant Insurance Company. Accordingly, the fourth respondent is liable to pay the compensation to the claimants as awarded by the Deputy Commissioner of Labour in W.C.No.26 of 2014. As far as the appellant Insurance Company, there is no liability to pay compensation.

9. Thus, the award dated 24.10.2016 in W.C.No.26 of 2014 is set aside as far as the appellant National Insurance Company is concerned and C.M.A.No.307 of 2017 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. However, the fourth respondent owner of the vehicle is liable to pay the award amount to the claimants. The claimants are at liberty to pursue the remedy against the fourth respondent who is the owner of the vehicle.

11. The appellant Insurance Company is directed to withdraw the award amount, if any deposited, with accrued interest by filing appropriate application before the competent authority.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Workmen Commissioner and
Deputy Commissioner for Labour,
Coimbatore - 18.

2. The Section Officer,
VR Section,
HighCourt, Madras

+1cc to Mr.NB. SUREKHA, Advocate, S.R.No.3325

KV(CO)
SM/02/03/2021

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C.M.P.No.2227 of 2017