

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.395 of 2017

Mrs.Vidhya

.. Appellant

Vs.

1.U.Sundaramoorthy

2.The New Assurance Company Limited,
New No.204, Old No.114, Kutchery Road,
Mylapore, Chennai - 600 004.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the decree and judgment dated 11.12.2014, made in W.C.No.550 of 2009, on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour - II, Chennai.

For Appellant : Mr.U.Chidambaram for
Mr.K.Varadhakamaraj

For Respondents : M/s.Salomi
M/s.C.Ramesh Babu

J U D G M E N T

The appellant herein is the petitioner in W.C.No.550 of 2009, filed by her claiming compensation for the fatal death of her son, who died due to the accident happened on 20.09.2009, while the deceased was driving the auto rickshaw bearing registration No.TN-01D-3999, as a driver employed under first respondent and the vehicle was insured with the second respondent.

2. Heard both sides. The Commissioner of Labour dismissed the claim stating that the accident was not happened during the course of employment under the first respondent. Aggrieved by that order, the appeal is filed.

3. According to the appellant her son viz., velu was employed as a driver under the first respondent and he received monthly salary of Rs.6,000/-, while so on 20.09.2009, her son driven the auto in GST Road, near Karunkuzhi Petrol Bunk,

Kanchipuram District, at that time, a Buffalo suddenly crossed the road. To avoid the accident, the deceased turned the above auto to the left side, unfortunately the auto was capsized. Due to the above said accident, the deceased was sustained multiple grievous injuries and he died on the spot.

4. The petitioner proved her claim through documents namely Exs.P1 to P7 and she was examined as PW.1. But the Commissioner of Labour erroneously dismissed the claim and concluded that employee-employers relationship was not proved by her.

5. The learned counsel for the appellant pointed out that before the Commissioner of Labour, the first respondent remained ex-parte and not raised any objection to the petitioner's averments. The silence on the part of the first respondent amounts to admission of the employee-employers relationship between them. But, without appreciating this fact, the Commissioner of Labour erroneously dismissed her claim. Hence, he prays to allow this appeal.

7. Point for consideration:

Whether the Commissioner of Labour was correct in holding that the accident has not occurred during the course of the employment and it was happened, while the vehicle was used by the deceased for his own purpose?

8. On perusal of the evidence, the mother of the deceased was examined as PW.1 and documents FIR, death certificate, legal heirs certificate, driving licence, policy copy, were marked on her side.

9. According to her, while her son driven the auto rickshaw belongs to the first respondent, he met with an accident and he died due to the grievous injuries sustained in that accident. But during the course of examination, he stated that while returning from the Ellaiyamman Koil along with his family members met with an accident. Even as per the FIR, when the deceased along with his family members returned from Perambur Ellaiyamman temple, the accident was happened. So the facts proved that while, the auto rickshaw used by the deceased for his own purpose, he met with the accident. There is no evidence that he driven the vehicle for 3rd parties at the time of accident. The evidence of the petitioner itself proved that the auto was driven by her son for his own purpose at the time of the accident. So the Commissioner of Labour concluded that the accident was not happened during the course of the employment under first respondent. Apart from that there is no evidence to establish the relationship between the first respondent and the deceased as employee-employer relationship.

So the Commissioner of Labour, dismissed the claim of the petitioner which calls for no interference by this Court. Accordingly, the substantial question of law is answered.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed. At the most, the petitioner can work out her remedies under the provisions of Motor Vehicle Act, if the law permits.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

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To

1.The Deputy Commissioner of Labour II
Commissioner for Workmen's Compensation
Chennai

2.The New Assurance Company Limited,
New No.204, Old No.114, Kutchery Road,
Mylapore, Chennai - 600 004.

+1 cc to Mr.K.Varadhakamaraj Advocate sr9435
+1 cc to Mr.C.Ramesh Babu Advocate sr9647

C.M.A.No.395 of 2017

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