



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 30.03.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

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C.M.A(MD)No.1404 of 2008
and
M.P(MD)Nos.2 of 2008 and 1 of 2009

M/s National Insurance Co. Ltd.,
Through its Manager,
10/40, Rajaji Street,
Kangayam - 638 701. ..Appellant/3rd Respondent

vs.

Seeniammal (died)

1.Sundaram
2.Palaniammal
3.Poongodi
4.Jeyalakshmi ..Respondents 1 to 4/Petitioners
5.R.Saminathan ..Respondents No 5/1st Respondent

6.Proprietor,
Sakthi Murugan Lorry Booking Office,
Trichy Road,
Palladam. ..Respondent No 6/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act against the order dated 07.01.2008 passed by the Deputy Commissioner of Labour, Dindigul in W.C.No.96 of 2003.

For Appellant : Ms.P.Malini
For Respondents : Mr.S.Karthik (for R1 to R4)
Mr.VOS.Kalaiselvam (for R5 & R6)

J U D G M E N T

This appeal has been preferred by the Insurance Company questioning the award passed by the Deputy Commissioner of Labour, Dindigul in W.C.No.96 of 2003.

2.The brief facts leading to the filing of this appeal would run thus:-

The original claimant Seeniammal is the mother of the deceased Raj @ Rengaraj. The said Rengaraj was employed as a Driver by the 5th respondent herein to his vehicle bearing registration No.TDM 6345. It is alleged that on 06.01.1999, when the deceased was working at the 6th respondent's booking office, he died. The said



incident had happened during the course of employment and when the deceased was on duty. At the time of incident, the deceased was 32 years old and he was earning Rs.1500/- per month. The wife of the deceased Smt.Kalarani also died due to shock of her husband's death. It is specifically pleaded in the claim petition that the claimant was a widow and was totally dependent of the deceased. The fifth respondent as the owner of the Booking Office and the vehicle and its insurer, the appellant are jointly liable to pay compensation.

3.Counter statement was filed by the appellant denying entire averments made in the claim petition. It is stated that the policy covers only for the death or injuries caused to the employees in any accident during their course of employment, but the deceased got down from the vehicle on 06.01.1999 and while he remained on leave in the booking office, he developed chest pain. Immediately, he was taken to Government Hospital, Palladam, where he died. The deceased had not met with any accident and it was a natural death and prayed to dismiss the claim petition.

4.It appears that when the claim petition was pending, the original claimant died and his brothers and sisters substituted themselves to pursue the claim petition. So, an additional counter came to be filed stating that the impleaded parties are not the legal representatives of the deceased and so, there are not entitled to maintain the present petition.

5.During the trial, the claimants examined 2 witnesses and marked 8 documents. On behalf of the respondents, 2 witnesses gave evidence and produced 3 documents. After analyzing both the oral and documentary evidence, the Deputy Commissioner of Labour held that the deceased Rengaraj @ Raj died due to stress and strain in the work and awarded compensation of Rs.2.04,850/- with 12% interest. Challenging the same, the present appeal has been filed.

6.The appeal was admitted on the following questions of law:-

- (i) Whether the respondents 1 to 4 are dependents on the income of the deceased as per section 2(1)(d) (iii) of the Act?
- (ii) Whether the respondents are entitled to maintain an application under the Act?

7.Ms.P.Malini, learned counsel for the appellant would argue that the finding of the Deputy Commissioner of Labour that the death of the workman happened during the course of employment due to stress and strain is without any evidence when the respondents 5 and 6 specifically stated that the deceased was on leave at the time of his death. It is further contended that the respondents 1 to 5 were neither wholly nor partly dependents in the earning of the workman at the time of his death, therefore, they are not entitled to maintain the claim petition. In this regard, the learned counsel



relied upon the following decisions:-

- "(i) 1977 A.C.J 517 (B.M.Habeebullah vs. Periaswami)
(ii) 2009(1) TN MAC 546 (Bhaskar Vs. Selvaraj and others)
(iii) 2017(1) TN MAC 383 (DB) (Anandha Lakshmi vs. TNSTC (Villupuram Division-I))"

8.Per contra, S.Karthick learned counsel for the claimants/respondents 1 to 4 would urge that the claimants have proved the fact that the workman died in the course of employment and the Deputy Commissioner also, on appreciation of evidence, awarded compensation. It is his submissions that all the legal heirs are entitled to the estate of the deceased, hence, no interference in this matter is required. In support of his submissions, he places reliance on the following decision:-

- "(i) A.I.R 1937 Calcutta 495 (Pasupati Dutt vs. Kelvin Jute Mills);
(ii) A.I.R 1994 SC 1176 (Rameshwar Manjhi vs. Management of Sangramgarh Colliery)
(iii) 1995 ACJ 49 (Proprietor, Radhakrishna Estate vs. Mary)
(iv) 2008(1) TLNJ 397 (Civil) (G.Deivasigamani and others vs. Metropolitan Transport Corporation Ltd.,)
(v) (2009)7 MLJ 1165 (Goutham Bafna vs. J.Pramod Kumar Basal)
(vi) 2012(3) LLN 510 (SC) (Oriental Insurance Co. Ltd., vs. Siby George and others)."

9.Heard the rival submissions of the learned counsels and carefully perused the materials available on records.

10.In instant case, it is an admitted fact that the mother of the deceased workman alone filed the claim petition contending that she was the sole dependent of the deceased as his wife already passed away issueless. It is equally not disputed that the sole claimant died pending disposal of the claim petition and thereafter, her legal heirs came on record and continued the proceedings.

11.The core issue arises for consideration in this appeal is whether the legal heirs of the original claimant are entitled for compensation as per the Section 2(1)(d) of the Act.

12. Section 2(1)(d) of the Workmen's Compensation Act, 1923 reads as follows:

"(d) "dependent" means any of the following



relatives of a deceased workman, namely --

(i) a widow, a minor (legitimate or adopted) son, an unmarried (legitimate or adopted) daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependant on the earnings of the workman at the time of his death --

(a) widower

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter (legitimate or illegitimate or adopted) if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law.

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive;

Explanation For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter of child respectively."

13.The above Section specifies, who are the dependants of the workman. The Full Bench of this Court in **1977 ACJ 517** (supra) had an occasion to decide the similar issue, wherein it has been held as follows:-

5.The object of the Act was the to make provision for the payment of compensation to a workman only, i.e., to the concerned employee himself in case of his surviving the injury in question and to his dependents in the case of his death [this being so in view of the definition contained in cl. (n) of sub-s (1) of S. 2] and to nobody



else (as would appear from the discussion which follows.) Section 3 of the Act provides that 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". This section is completely silent about the person to whom compensation is payable. Section 4 deals with the quantum of compensation which is to be assessed with reference to the provisions of Schedules I and IV to the Act. This section is also silent as aforesaid and when coupled with the provisions of Schedule IV makes compensation payable in a lump sum when the injury in question results in death or permanent total disablement of the worker involved in the accident and through half-monthly payments when such injury cause only temporary disablement. Section 4A lays down inter alia that compensation under S. 4 shall be paid as soon as it falls due. This section also does not mention the person or person entitled to the compensation and the same is true of S. 5, 6 and 7 which deal with the method of calculating wages, review and commutation of half-monthly payments. Then comes S. 8 which may be quoted here in extenso;.....

7. This analysis of the provisions of S. 8, especially that of sub-s. (4) which enjoins refund of the compensation to the employer in case no dependents are forthcoming, leaves no room for doubt that the Act was not intended to benefit any person except the workman and his dependent. And there are good reasons for the object of the Act being so restricted. As already stated, prior on the enforcement of the Act a workman had no remedy in respect of an injury arising from an accident attributable to his employment unless he was entitled to damages in tort. It was the Act which for the first time provided a remedy, for accidental injuries to a workman even though his employer could not be held responsible, therefore, and even though it had resulted from an accident for which perhaps the workman himself was to blame. It was in these circumstances reasonable to extend the benefit which the Act provided for the workman himself in respect of the injury to his dependents only and to no others.....

8. A look at this definition of the terms "dependent" would show that it is not intended to benefit all the relations of a deceased workman, but to embrace only those relations who, to some extent, depend upon him for their daily necessities, so much so that even some of this



nearest and dearest ones, viz., sons who have attained majority, married daughters, and an illegitimate daughter, whether married or unmarried and excluded if they were not dependent on the worker's earnings, wholly or in part. Kinship coupled with dependency, is thus made the sole criterion for a person to fall within the ambit of the definition. And if that be so, there is no reason why the benefit of the Act should go to heirs other than "dependents" and S. 9 coupled with the definition in cl (n) of sub-s. (1) of S. 2 be given a restricted meaning in derogation of the language used by the Legislature. To hold otherwise and to extend the benefit of the Act to the legal representatives of the deceased workman or of the dependents would be to burden the employer with liability not flowing from the subject which the Act sought to achieve and to pass the benefit provided by the Act to persons altogether outside the class contemplated by it."

14. In **2009(1) TN MAC 546** (supra), the learned Single Judge of this Court has held as follows:-

"14. The first and second substantial questions framed by this court at the time of admission are in effect one and the same. Hence they are taken up together for discussion. It is the contention of the appellant that the claimants being parents of the deceased, in the absence of any evidence to the effect that they were dependents of the deceased, the award of compensation under the Workmen's Compensation Act in their favour cannot be sustained. The learned counsel for the appellant contends that neither in the claim petition nor in the evidence, clear-cut averments were made to the effect that the respondents 1 and 2/claimants 1 and 2 were in fact dependent upon the income of the deceased and thus they were dependents of the deceased."

"16. A widowed mother becomes a dependent without any further proof of dependency as per Sub clause (i) of Section 2(d) whereas, as per Section 2(d) sub-clause (iii)(b), a parent other than a widowed mother will become a dependent only if he/she is wholly or in part dependent on the earnings of the workman at the time of his death. In the case on hand, the respondents 1 and 2 herein/claimants 1 and 2 are admittedly the parents of the alleged workman, namely the deceased Sivakumar. They don't come under Section 2(d) sub clause (i). As they come under sub clause (iii) of Section 2(d) it must be proved that they were either wholly or in part dependent on the earnings of the deceased at the time of his death.

https://hcservices.mca.gov.in/hcservices/ the claim petition, as rightly pointed out by



the learned counsel for the appellant, it has been stated that any one of the respondents 1 and 2 herein/claimants 1 and 2 was either wholly or in part depending on the earnings of the workman. Even the first respondent herein/first claimant, in his evidence as PW-1 has not stated anything about the contribution of the earnings of the deceased to the claimants. Nothing is there in his evidence to show that the respondents 1 and 2/claimants did receive any monetary support from the deceased or that they were either wholly or in part depending upon his earnings. Even the other witnesses examined on the side of the claimants, namely PW-2 and 3 have not spoken anything about the dependency of the respondents 1 and 2/claimants 1 and 2 on the deceased. Therefore, this court has no other option except to accept the contention of the learned counsel for the appellant that the respondents 1 and 2/claimants 1 and 2 have not proved that they were depending on the income of the deceased either in whole or in part to make themselves entitled to claim compensation under the Workmen's compensation Act for the death of the deceased."

15. Although the Division Bench of this Court in **2017(1) TN MAC 383 (DB)** (supra) has not dealt with an issue directly, which comes up for consideration in this case, but made some observations in favour of the appellant. The same is extracted hereunder:-

"12. Going through the judgments, we are of the considered view that there is a distinction between being a dependent on the income and receiving contribution from the deceased, either monetarily or through the services rendered by the deceased to the members of the family, legal representatives, which, in our considered view, is also a decisive factor, in computing the compensation. Though the provision under Section 2(1)(d) of the Workmen's Compensation Act, 1923, defines, who are all the dependents entitled to claim compensation under the Workmen's Compensation Act, we are of the view that there is a clear distinction under Section 166 of the Motor Vehicles Act, which states that all the legal representatives are entitled to claim compensation.

13. Section 2(1)(d) does not confer any statutory right to a married daughter to seek for compensation under the Workmen's Compensation Act. The said Act has come into force in 1923. Whereas, Motor Vehicles Act has been enacted in the year 1939. Section 166 of the Motor Vehicles Act, does not restrict the entitlement of the elder brother to prefer any claim along with others. Both Acts are beneficial legislations. Nevertheless, there is a clear distinction insofar as the language employed in the



said Acts. When Section 2(1)(d) of the Workmen's Compensation Act, speaks about dependency, Section 166 of the Motor Vehicles Act, speaks about the right of the legal representatives to succeed to the estate of the deceased. There is a specific inclusion of all the legal representatives to claim for compensation under Section 166 of the Motor Vehicle's Act. Therefore, merely because a brother has joined the other claimants/legal representatives, such claim cannot be said to be against the statutory provision, and therefore, to be rejected in limini.

14. If the intention of the framers of the Legislature that the subsequent enactment, viz., Motor Vehicles Act, 1988, was to restrict the payment of compensation only to dependants, the word "dependant" as defined in Section 2(d) of the Workmen's Compensation Act would have been incorporated in the Motor Vehicles Act also. All the legal heirs are entitled to the estate of the deceased and can claim compensation."

16. Now I would like to consider the decisions cited by the learned counsel for the respondent. The Honourable Apex Court in **AIR 1994 SC 1176** (supra) was called upon to decide a question whether an industrial dispute survives when the workman concerned dies during its pendency and whether the proceeding can be continued by the legal heirs of the deceased workman. The view expressed by the Division Bench of Calcutta High Court reported in **AIR 1937 Cal 495** (supra) was considered and not accepted by the Full Bench of this Court in the case of **B.M.Habeebullah** (1977 ACJ 517). However, a single Judge of the Rajasthan High Court in **1994-11 L.L.N 683** differed from the view taken by the Full Bench referred above.

17. In **1995 ACJ 49** (supra), a question which arose before the Karnataka High Court was whether during the pendency of the claim petition if the workman dies, whether the maxim actio personalis moritur cum persona would apply. In that case, workman, who sustained employment injury filed a claim petition under Workmen Compensation Act and when it was pending died. His wife pursued the claim petition, which ended in award in favour of his wife. The employer assailed the same before the High Court raising the above question, however, the High Court answered the question in negative. The decisions of this Court reported in **2008(1) TLNS 397 (civil)** and **2009(7) MLJ 1165** arise under Motor Vehicles Act, wherein it has been held that brother and sister of the deceased, who may not be dependents, are entitled to maintain claim petition. In **2012 (3) LLN 510** (supra), the Hon'ble Apex Court has held that payment of compensation becomes due on the date of the accident. The decisions cited by the learned Advocate for the respondent referred supra are either inapplicable to the facts of this case or decided against the



principles laid down by a Full Bench of this Court. So, they are not helpful to the respondents.

18.In the present case, it appears that the respondents/claimants are brothers and sisters of the deceased. It is not disputed that the deceased was already married and he lost his wife and the couple had no issues. It is to be presumed that the respondents/claimants did not join with the original claimant to file the claim petition being aware of the fact that they are not dependents of the deceased as defined under the workman compensation Act, entitled to seek compensation, however, later they wanted to pursue the claim petition after the demise of the original claimant. It is apposite to note that the dependency of the respondents/claimants has been neither specifically pleaded nor proved in this case. Per contra, there is a specific pleading that the original claimant was the dependent of the deceased workman. Merely because they are the legal heirs of the deceased workman, the respondents are not entitled to continue the claim petition, which was filed by the widowed mother of the deceased under Workman Compensation Act. In my considered view, the principles laid down by the Full Bench of this Court in **B.M.Habeebullah**, followed by a single Judge in **2009(1) TNMAC 546** in **Bhaskar's** case would squarely apply to the case on hand.

19.In such view of the matter, the substantial questions are answered in favour of the appellant. Consequently, the award passed by the Deputy Commissioner of Labour is set aside.

20.In the result, this Civil Miscellaneous Appeal is allowed. The amount deposited by the appellant before the Deputy Commissioner of Labour, Dindigul, shall be refunded to them. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Deputy Commissioner of Labour,
Dindigul.

2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



C.M.A(MD)No.1404 of 2008

+1 CC to M/s.P.MALINI, Advocate (SR-14428[F] dated 30/03/2021)

+1 CC to M/s.S.KARTHIK, Advocate (SR-14674[F] dated 31/03/2021)

C.M.A(MD)No.1404 of 2008

and

M.P(MD)Nos.2 of 2008 and 1 of 2009

30.03.2021

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