



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A(MD)No.1441 of 2008

and

M.P(MD)No.1 of 2009

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The Divisional Manager
United India Insurance Company Limited,
Divisional Office - III,
Seethalakshmi Complex,
Thirunagar,
Madurai.

... Appellant / 2nd Respondent

Vs.

1.Periasamy
2.Karuppayee,
3.Senthi
4.Shanti

... Respondents 1 to 4 /
Petitioners 1 to 4

5.A.Selvaraj

... 5th Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, against the order passed in W.C.No.63 of 2004, dated 27.06.2008, on the file of the Deputy Commissioner of Workmen's Compensation, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.K.S.Duraipandian
(R2 & R4)

For Respondent-1 : Died

For Respondent-5 : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed by the Insurance Company, challenging the order passed in W.C.No.63 of 2004, dated 27.06.2008, on the file of the Deputy Commissioner of Workmen's Compensation, Madurai.

2. The facts giving rise to the present appeal are that the deceased Balamurugan was working as a 'Loadman' under one Selvaraj, the 5th respondent herein. On 08.09.2003, at about 8.45

<https://hcservices.ecourts.gov.in/eservices/>



Erukkalai Vellore to Pudupatti, the vehicle viz., Lorry, bearing Registration No.TCU 1269, driven by its driver Thiagarajan, dashed against the electric post and due to which, the deceased was electrolyzed. Immediately, the deceased was taken to Madurai Government Rajaji Hospital and on the way to hospital, he died.

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3. The respondents 1 to 4 herein, who are father, mother and unmarried sisters, filed a claim petition, in W.C.No.63 of 2004, before the learned Deputy Commissioner of Workmen's Compensation, Madurai, claiming a sum of Rs.4,47,008/-, as compensation, for the death of the deceased Balamurugan.

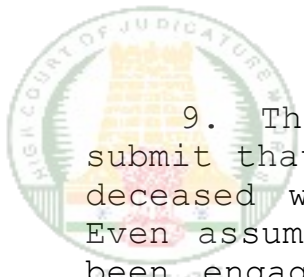
4. Resisting the claim petition, the Insurance Company has filed a counter affidavit stating that the deceased travelled as a gratuitous passenger in a goods vehicle and he was one among the member of marriage group. The deceased was aged 14 years, at the time of accident and that a person, aged 14 years, cannot be employed. The Authority has erroneously comes to the conclusion that the deceased was a coolie and granted compensation.

5. To substantiate the case, the 1st petitioner examined himself as P.W.1 and on the side of the petitioner 6 documents were marked as Ex.P1 to Ex.P6. On the side of the 2nd respondent / appellant Insurance Company, 2 witnesses were examined as D.W.1 and D.W.2 and 2 documents were marked as Ex.B1 and Ex.B2.

6. The Deputy Commissioner of Workmen's Compensation, Madurai, upon considering the oral and documentary evidence has awarded a sum of Rs.3,35,597/-, as compensation and directed the 2nd respondent / appellant Insurance to pay the compensation, within a period of 30 days from the date of receipt of a copy of the order, failing which, directed to pay award the amount with interest at the rate of 12% p.a., from the date of accident till the date of deposit.

7. Aggrieved over the same, the appellant Insurance Company has preferred the present Civil Miscellaneous Appeal.

8. The learned counsel appearing for the appellant Insurance Company would submit that the deceased was a gratuitous passenger in a goods vehicle and he was one among the member of the marriage group, travelled in the vehicle. The deceased was aged 14 years, at the time of accident and that a person, aged 14 years, cannot be employed. The Authority has erroneously comes to the conclusion that the deceased was a coolie and granted compensation. Hence, the learned counsel prayed for setting aside the order passed by the learned Deputy Commissioner of Workmen's Compensation, Madurai.



9. The learned counsel appearing for the claimants would submit that the victim was a coolie, employed by one Selvaraj, the deceased was travelling as a coolie along with marriage party. Even assuming that the deceased was a relative, his services has been engaged only as a coolie to load and unload the marriage articles in the vehicle. The compensation awarded by the Authority was perfectly in order. He further stated that the policy for the vehicle was valid one and the compensation has got to be paid by the Insurance Company, which has rightly been granted. Hence, prayed for dismissal of the appeal.

10. I have heard the learned counsels appearing on either side and perused the materials on record.

11. The factum of accident and the death is not in dispute. The Authority has taken note of the minimum wages applicable to a coolie, as there was no proof of wage produced by the claimants and applying the factors applicable to a person aged 16 years, has granted the compensation. Though the contention of the Insurance Company appears sound logic, that the person aged below 18 cannot be employed under the Labour Enactment, even an adolescent can be employed and the employment of child alone is prohibited and the adolescent is defined as a person aged between 14 and 18. The various Labour enactments also have specifically restricted the working hours to 6 instead of 8 hours, as has been meant for the regular employees. Since the Authority has taken note of the minimum wages as Rs.2915/- per month, which is applicable for an employee, who is working 8 hrs a day, payable for 30 days in a month. The wage per day for a regular employee comes to Rs.97.16 and for one hour Rs.12.145 and if it is calculated for 6 hours, it comes to Rs.72.87 and for 30 days, it comes to Rs.2186/-.

12. Taking note of the fact that the authority has rightly came to the conclusion and fastened the liability on the Insurance Company. With regard to the Award of compensation, for a minor, who can be allowed to work only for 6 hrs., a day, the wages is fixed as Rs.2186/-, per month and therefore, this Court modifies the Award to Rs.2,49,882.78 (Rs.72.87 x 30) and rounded off to Rs.2,50,000/- from Rs.3,33,097/-.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. The amount awarded by the Deputy Commissioner of Workmen's Compensation, Madurai, is modified to Rs.2,50,000/- from Rs.3,33,097/-. The appellant Insurance Company is directed to deposit the award amount, now fixed by this Court, if not already deposited. On such deposit, the claimants are permitted to withdraw the deposited amount with accrued interest and costs. The appellant Insurance Company is permitted to withdraw the excess amount, with accrued interest, if already deposited the



entire award amount. After conducting the dependant enquiry, as expeditiously as possible, the Authority is expected to disburse the amount to the claimants, within a period of 90 days from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

MPK

To

The Deputy Commissioner of Workmen's Compensation,
Madurai.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

**C.M.A (MD) No.1441 of 2008
03.12.2021**

MA (CO)

SB(12.01.2022) 4P 4C