



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.09.2021

Delivered On : 17.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) .Nos.1050 & 1051 of 2013

WEB COPY

M/s.New India Assurance Company Limited,
Divisional Office,
248-B, Rekha Towers,
Kamarajar Salai,
Madurai-625 009.

.. Appellant/Respondent NO.2
in both appeals

Vs.

1.R.Pandiammal
2.A.Karthigai Selvi
3.R.LakshmiPriya
4.R.Krishnavelu
5.R.Gunasekaran
6.I.Karuppasamy

.. Respondents 1 to 5/Petitioners 1 to 5
.. 6th Respondent/1st Respondent
in C.M.A. (MD) .No.1050 of 2013

1.K.Irulayee
2.Sathuragiri
3.Annakodi
4.Minor.Mahalakshmi
5.Minor.Mahalingam
6.I.Karuppasamy

.. Respondents 1 to 5/ Petitioners 1 to 5
.. 6th Respondent/1st Respondent
in C.M.A. (MD) .No.1051 of 2013

(respondent Nos. 4 and 5 in
C.M.A. (MD) .No.1051 of 2013 are
represented by their mother and
natural guaridan Irulayee/the
first respondent in C.M.A. (MD) .No.1051 of 2013)

COMMON PRAYER: This Civil Miscellaneous Appeals are filed under
Section 30 of the Workmen's Compensation Act, 1923, against the
award dated 20.12.2012 made in W.C.Nos.95 & 96 of 2009 on the file
of the Commissioner of Workmen Compensation Commissioner, Madurai.

In both appeals

For Appellant
For Respondents

: Mr.D.Sivaraman (Both Cases)
: Mr.N.Sudhagar Nagaraj (Both Cases)
for Mr.A.Theethar
for RR1 to 6



C O M M O N J U D G M E N T

These appeals are filed against the order made in W.C.Nos.95 & 96 of 2009 dated 20.12.2012 on the file of the Workmen Compensation Commissioner, Madurai.

2. In both the petitions, the appellants herein are the second respondent and the respondent Nos.1 to 5 herein are the claimant Nos.1 to 5 and the sixth respondent herein is the first respondent.

3. A brief substance of the claim petition is as follows:

The claimants are the dependents of the deceased persons. The deceased persons were working as load men in a Mini lorry bearing Registration No.TN 67 X 6843, which belongs to the first respondent. On 23.05.2008 at about 05.30 p.m., when the deceased persons were travelling in the Mini lorry, the lorry met with an accident, the deceased persons were admitted in Madurai Rajaji Hospital and they expired on 29.05.2008 and 24.05.2008. The accident occurred during the course of employment. The deceased persons were aged about 45 years at the time of accident and they were earning a sum of Rs.5,500/- as monthly income. Hence, each sets of the claimants claimed a sum of Rs.7,00,000/- as compensation.

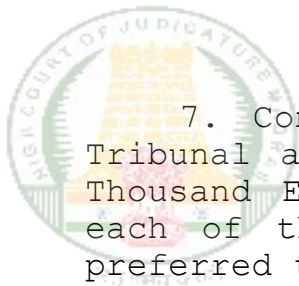
4. A brief substance of the counter filed by the first respondent is as follows:

The deceased persons died in the accident, during their course of employment. The vehicle was insured with the second respondent and the Insurance Policy is valid at the time of accident. Hence, the second respondent alone is liable to pay the compensation.

5. A brief substance of the counter affidavit filed by the second respondent is as follows:

The accident vehicle is a goods vehicle and on the date of accident, the deceased persons and others travelled in the vehicle to attend an Ear piercing ceremony that took place in Periya Nayagi Amman temple. In the First Information Report, this fact has been clearly stated. Further, the first respondent failed to inform about the accident, the age, profession and income of the deceased persons are to be proved and the claimants have to prove that they were the dependents of the deceased.

6. In the joint trial for both the petitions, one witness was examined and seven documents were marked on the side of the claimants. One witness was examined on the side of the first respondent. Two witnesses were examined and five documents were marked on the side of the second respondent.



7. Considering the facts and circumstances of the case, the Tribunal awarded a sum of Rs.3,08,860/- (Rupees Three Lakhs Eight Thousand Eight Hundred and Sixty Rupees Only) as compensation in each of the petitions. Against which, the second respondent has preferred these appeals.

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8. On the side of the appellant, it is stated that the Deputy Commissioner has not given any finding with regard to the evidence of P.W.1, who, in his cross-examination, has admitted that the deceased persons were travelling in the goods vehicle to attend an Ear Piercing ceremony. The Deputy Commissioner has failed to consider the averments made in the First Information Report which clearly shows that the vehicle was hired for the purpose of carrying the passengers and not for transporting goods. Further the claimants relied upon the First Information Report for proving their case. Hence, they could not deny the contents of the First Information Report.

9. The owner of the vehicle was not examined. R.W.1(1) is the son of the owner of the vehicle and his evidence is not reliable. R.W.1(1) has admitted that he did not produce any evidence to prove the employer-employee relationship between his father and the deceased persons.

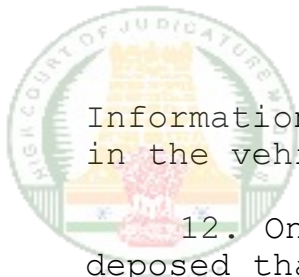
10. At this juncture, the following two questions were raised for consideration as follows:-

(i) Whether the Workmen Compensation Commissioner is right in holding that the insurer is liable to compensate the claimants in the absence of any reliable oral or documentary evidence to prove the employer-employee relationship between the insured and the deceased which is mandatory under Section 3 of the W.C.Act?

(ii) Whether the learned Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour is correct in directing the appellant/Insurance Company to pay interest on the award, from the date of the accident, which is in contradiction to Section 4-A(3) of the Workmen's Compensation Act?

11. Issue No:1

The contention of the appellant is that there was no employer-employee relationship between the deceased and the sixth respondent. R.W.1 has also given a statement that there was no employee-employer relationship between the deceased and the sixth respondent. The investigation report of R.W.1 was marked as Ex.R1 and R2. In the First Information Report, it is stated that at the time of the accident, when the deceased and others were returning home town, after attending a temple festival. On the side of the appellant, it is stated that the deceased persons travelled as gratuitous passengers in the goods vehicle. There was no wording in the First



Information Report to denote that the deceased travelled as load men in the vehicle.

12. On the side of the respondents, it is stated that R.W.1 has deposed that the deceased persons travelled as load men in the goods vehicle and they were working as load men under his father.

13. On the side of the appellant, a judgment reported in **2007 (2) TN MAC 106 (SC) in the case of ORIENTAL INSURANCE COMPANY LIMITED vs. PREMLATA SHUKLA AND OTHERS** is cited, wherein, it is stated as follows:

"once a part of contents of document admitted in evidence party bringing same on record cannot be permitted to turn round and contend that other contents contained in rest part thereof had not been proved-Document/FIR marked as Exhibit and both parties relied thereupon-Once a part of it relied upon by both parties, Tribunal cannot be said to have committed any illegality in relying upon other part, irrespective of contents of document been proved or not-if contents proved, question of reliance upon a part thereof and not upon rest, on technical ground that same had not been proved in accordance with law, would not arise".

14. On the side of the appellant, it is further stated that the complainant, who relied on the First Information Report, cannot deny its contents and a judgment reported in **(2009) 2SCC 75 in the case of NATIONAL INSURANCE COMPANY LIMITED vs. RATTANI AND OTHERS** is cited, wherein, it has been stated as follows:

"FIR made part of claim petition and ordinarily allegations made in the FIR not admissible in evidence per se but as the allegation made in FIR had been made a part of the claim petition, Tribunal and the appellate Courts entitled to look into the same. Furthermore, an admission made in the pleadings is admissible in evidence".

15. On the side of the respondent, it is stated that the First Information Report is not a substantial piece of evidence. It may be used for contradiction or for corroboration.

16. On the side of the appellant, it is stated that pay and recovery order cannot be passed in the case of gratuitous passenger and that it is the liability of the claimants to prove that the deceased persons travelled as load men. In this regard, a judgment of this Court reported in **2018(2)TNMAC 731 (DB) in the case of BHARATI AXA GENERAL INSURANCE COMPANY LIMITED vs. Aandi** is cited, wherein, it has been stated as follows:

"whether Insurer can be directed to pay and recover-



required to cover only certain classes of persons-No mandatory requirement for the Insurer to cover persons travelling as Passengers in Goods Vehicle, unless such passenger is Owner or Agents of Owner of goods accompanying goods in vehicle-In absence of any statutory requirement to cover liability in respect of Passenger in Goods Vehicle, Principle of "Pay and Recover" as statutorily recognized in Section 149(4) &(5), not applicable ipso facto to such cases".

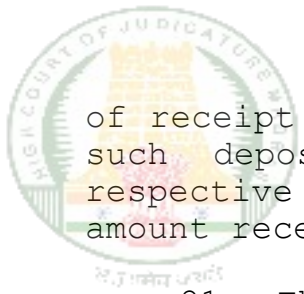
17. It is seen that in the First Information Report, it is stated that the deceased persons and others travelled in the goods vehicle to attend a function in a temple. Whether the deceased persons travelled as passenger or load men is not specifically mentioned in the First Information Report. No eye-witness was examined on the side of the respondents and the driver of the vehicle was not examined. R.W.2(2) is the Special Officer engaged by the second respondent for investigating the case. The evidence of R.W.2 and the contentions of Ex.R1 and R2 were not correlated by the evidence of any independent witness. R.W.1 is the son of the owner of the vehicle and he has deposed that the deceased persons were the employees of his father and they travelled to deliver the goods in the temple. From the First Information Report, it is clear that the accident took place, after unloading the goods. The evidences of P.W.1 and R.W.1 correlate each other. Hence, it is decided that the employer-employee relationship between the sixth respondent and the deceased is proved. Hence, the question No.1 raised by the appellant is not sustainable.

18. Issue No.2:

The appellant has stated that the Deputy Commissioner has ordered interest for the award amount from the date of accident which is contrary to Section 4(a)(iii) of the Workmen's Compensation Act.

19. However, under Section 4(a)(iii) of the Workmen's Compensation Act, the employer is liable to pay interest at the rate of 12% per annum after the completion of 30 days from the date of accident. Hence, it is decided that the claimants are entitled for interest at the rate of 12% from the 31st day of the accident and the question No.2 raised by the appellant is decided accordingly.

20. Accordingly, the Civil Miscellaneous Appeal in C.M.A.(MD). No.1050 of 2013 is dismissed and the appellant is directed to pay a sum of Rs.3,08,680/- (Rupees Three Lakhs Eight Thousand Six Hundred and Eighty Rupees Only) along with interest at the rate of 12% per annum from the 31st day of accident till the date of deposit to the credit of W.C.No.95 of 2009 on the file of the Workmen Compensation Commissioner, Madurai, within a period of eight weeks from the date



of receipt of a copy of this judgment, if not already deposited. On such deposit, the claimants are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier.

21. The Civil Miscellaneous Appeal in C.M.A.(MD).No.1051 of 2013 is dismissed and the appellant is directed to pay a sum of Rs.3,08,680/- (Rupees Three Lakhs Eight Thousand Six Hundred and Eighty Rupees Only) along with interest at the rate of 12% per annum from the 31st day of accident till the date of deposit to the credit of W.C.No.96 of 2009 on the file of the Workmen Compensation Commissioner, Madurai, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the claimants are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. The appellant is directed to deposit the share of the minor claimants / respondent Nos.4 and 5 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Workmen Compensation Commissioner, Madurai.

COPY TO:-

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+2 CC to M/s.D. SIVARAMAN, Advocate (SR-35052 & 35053[F]
dated 18/11/2021)

+1 CC to M/s.N. SUDHAGAR NAGARAJ, Advocate (SR-34826[F]
dated 17/11/2021)

C.M.A.(MD)Nos.1050 & 1051 of 2013

17.11.2021

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