



3.A brief substance of the claim petition in W.C.No.254 of 2010 is as follows:

The son of the claimant by name Dhanasekar, was working as a cleaner cum Labourer in the Mahindra van bearing registration No.TN-45-AK-9478 that belongs to the first respondent. On 20.05.2009, when the deceased Dhanasekar was travelling in the van as a cleaner, from Trichy to Lalgudi, the van was hit by another vehicle and the deceased died in the accident. The deceased was earning Rs.8,000/- (Rupees Eight Thousand only) per month and he was aged about 22 years at the time of accident and the claimant prayed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The deceased was not working as a cleaner. The age and income of the deceased is denied. The driver was not having valid driving licence. Since there was violation of policy, the second respondent is not liable to pay compensation and prayed the petition to be dismissed.

5.On the side of the claimants, one witness was examined and ten documents were marked. On the side of the respondent, no witness was examined and no document was marked. After the trial, the learned Deputy Commissioner of Labour has awarded Rs.4,45,240/- (Rupees Four Lakhs Forty Five Thousand Two Hundred and Forty only) as compensation. Against which, the appellant herein has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the driver of the insured vehicle was not holding effective driving licence and that the appellant is not liable to indemnify the owner of the vehicle. The policy is under the provision of the Motor Vehicle Act and the insurer is not liable to pay compensation under the Workmen Compensation Act.

7.The points for consideration are as follows :-

"Whether the learned Commissioner for Workmen Compensation is justified in holding that the insurer is not entitled to avoid their liability under Section 149 of the Motor Vehicle Act for the reason that the claim is laid under the provisions of the Workmen Compensation Act ?"

8.On the side of the appellant, it is stated that the vehicle is a goods carrier and a commercial vehicle and that the van involved in this case is a pick up van. The driver is not having endorsement in his license and hence, the company is not liable to pay compensation.



9. On the side of the respondents, it is stated that the classification of the vehicle has to be done on the basis of the unladen weight of the vehicle. If the unladen weight of the vehicle is below 7,500 kg, irrespective of the nature of usage of the vehicle, it has to be considered as light motor vehicle. The vehicle concerned in this case is below 3,000 kg and it has to be classified only as a light motor vehicle.

10. The only defence raised by the appellant is regarding the non availability of endorsement in the license of the driver of the pick up van. Considering the Judgment of the Hon'ble Supreme Court in the case of ***Mukund Devagan v. Oriental Insurance Co. Ltd.***, reported in **2017 SCC 735**, wherein it is held that a vehicle below 7,000 kg can be classified as Light Motor Vehicle and endorsement in the license is not necessary. Here, the weight of the unladen pick up van is only 3,000 kg. As per above citation, this van can be classified only as a Light Motor Vehicle and no endorsement in the licence is necessary.

11. The appellant has not denied that the deceased was working as a cleaner in the vehicle that belongs to the second respondent. The deceased met with the accident in the course of his employment. The age of the deceased was proved by the evidence of P.W.1 and by the postmortem report and by the death certificate. The monthly income was correctly fixed by the Tribunal.

12. In the above circumstances, the averments raised by the appellant are not sustainable. There is nothing sufficient enough to interfere in the order passed in W.C.No.254 of 2010 dated 22.08.2012, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy and thereby, this Civil Miscellaneous Appeal is dismissed.

13. The first respondent is entitled to a sum of Rs.4,45,240/- (Rupees Four Lakhs Forty Five Thousand Two Hundred and Forty only) as compensation with interest at the rate of 12% from the date of the claim petition till the date of realization.

14. The appellant is directed to deposit Rs.4,45,240/- (Rupees Four Lakhs Forty Five Thousand Two Hundred and Forty only) with 12% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent is permitted to withdraw his award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The first respondent



is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1.The Deputy Commissioner of Labour,
Trichy

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-23748[F] dated 23/07/2021)

+1 CC to M/s.A.ANANDHAN, Advocate (SR-23747[F] dated 23/07/2021)

C.M.A. (MD)No.1239 of 2013
22.07.2021

RK (02.08.2021) 4P 6C