



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.07.2021

Delivered On : 15.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1271 of 2013

and

M.P.(MD)No.2 of 2013

WEB COPY

The Manager,
Iffco Tokyo General Insurance
Company Ltd.,
No.82, Preetham Plaza,
I-Floor, Chandra Ganthi Nagar,
Ponmeni Bye Pass Road,
Madurai 625 010.

..Appellant

Vs.

1.T.Pakkialakshmi
2.T.Kanniammal
3.Mohamed Ibrahim

.. Respondents/Petitioners

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the order dated 10.09.2012, made in W.C.No.259 of 2007 on the file of the Commissioner of Workmen Compensation, (Deputy Commissioner of Labour), Dindigul.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents 1 and 2	: Mr.B.Raja
For 3 rd Respondent	: Mr.V.Perumal

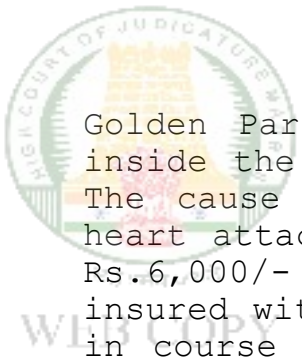
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in W.C.No.259 of 2007 dated 10.09.2012, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

2.The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the claim petition. The respondents 1 and 2 herein have filed a petition in W.C.No.259 of 2007, claiming a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

3.A brief substance of the claim petition in W.C.No.259 of 2007 is as follows:

The brother of the claimants, Muthuvel was working as the driver in a car bearing registration No.TN-65-F-0784, which belongs to the first respondent. On 16.06.2006, the car was hired by somebody and the deceased took the vehicle to Kodaikanal and on 17.06.2006, after dropping the passengers, he parked the car at the



Golden Park Hotel car parking and that the deceased was sleeping inside the car and that the deceased was found dead on 18.06.2006. The cause of death might be climatic condition or due to sudden heart attack. The deceased was aged about 29 years and was earning Rs.6,000/- (Rupees Six Thousand only) per month. The vehicle was insured with the second respondent. The accidentally death took place in course of employment and prayed a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

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

The deceased was not the employee of the first respondent. The death was not in the course of employment. The death was due to sudden heart attack, which is a natural one. The claimants are not the legal heirs of the deceased. There is no employer employee relationship between the deceased and the first respondent. The age and income of the deceased is denied and prayed the petition to be dismissed.

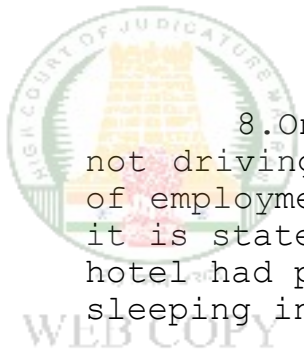
5.On the side of the petitioner, one witness was examined and nine documents were marked. On the side of the respondent, no witness was examined and no document was marked. After the trial, the learned Deputy Commissioner of Labour has awarded Rs.4,22,340/- (Rupees Four Lakhs Twenty Two Thousand Three Hundred and Forty only). Against which, the appellant herein has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that there was no nexus between the nature of job and the cause of the death. The deceased was not working under the third respondent at any point of time. The FIR is not a conclusive proof to decide the employer employee relationship between the third respondent and the deceased. The postmortem certificate is not sufficient enough to prove the cause of death. There was no medical evidence. The doctor was not examined. There is no proof to show that the deceased suffered from cardiac arrest on account of his avocation and prays the impugned order to be set aside.

7.The points for consideration are as follows :-

"1.In the absence of nexus between the nature of employment held by the deceased workman and the cause of his death whether the learned Commissioner for Workmen is justified in fastening the liability on the insurer ?

2.Whether the learned Commissioner for Workmen Compensation is justified in finding the relationship of employer-employee between the owner of the vehicle and the deceased without any proof in support of the same ?"



8. On the side of the appellant, it is stated the deceased was not driving the car and that there was no nexus between the nature of employment and the cause of death. On the side of the appellant, it is stated that the deceased, after dropping the passengers in the hotel had parked his vehicle in parking area of the hotel and he was sleeping inside the car and was found dead in the morning.

9. On the side of the respondents, it is stated that the driver was on duty till he return his home. Since the deceased was waiting for the passengers, he has to be considered on duty.

10. It is seen that the deceased has dropped the passengers at Kodaikanal. The deceased, who was left in the car died either due to climatic condition or due to cardiac arrest. Though the doctor was not examined, postmortem was conducted. The postmortem report was filed and the same was marked as Ex.P2. A driver of taxi has to be deemed on duty till he returns back home. Hence, it is decided that the death was during the course of employment.

Issue No.2:

11. On the side of the appellant, it is stated that there was no employer employee relationship between the owner of the vehicle and the deceased and there is no evidence regarding the employment. There was no evidence on the side of the Insurance Company to disprove master servant relationship. The third respondent herein was held exparte by the learned Deputy Commissioner of Labour, Dindigul. When the owner of the vehicle was set exparte, the Court can presume that he accepts the contentions made out in the petition. As there was no rebuttal evidence on the side of the third respondent, it is decided that there was employer and employee relationship between the deceased and the owner of the vehicle.

12. There is no serious dispute regarding to the quantum fixed by the learned Deputy Commissioner of Labour, Dindigul. Hence, it is decided that the Labour Court is correct in awarding a sum of Rs.4,22,320/- (Rupees Four Lakhs Twenty Two Thousand Three Hundred and Twenty only) as compensation to be paid by the appellant herein.

13. There is nothing sufficient enough to interfere in the order passed in W.C.No.259 of 2007 dated 10.09.2012, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul and thereby, this Civil Miscellaneous Appeal is dismissed.

14. The respondents 1 and 2 are entitled to a sum of Rs.4,22,320/- (Rupees Four Lakhs Twenty Two Thousand Three Hundred and Twenty only) as compensation with interest at the rate of 12% from the date of the claim petition till the date of realization.



15.The appellant is directed to deposit Rs.4,22,320/- (Rupees Four Lakhs Twenty Two Thousand Three Hundred and Twenty 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 respondents 1 and 2 permitted to withdraw their respective share with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The respondents 1 and 2 are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /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,
Dindigul

Copy to

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

+1 CC to M/s.A.SRINIVASAN, Advocate (SR-22614[F] dated 15/07/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-22762[F] dated 15/07/2021)

C.M.A. (MD)No.1271 of 2013
15.07.2021

NS (CO)

KB(28.07.2021) 4P 6C

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