



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A(MD)No.425 of 2009

and

M.P(MD)Nos.1 to 3 of 2009

The Oriental Insurance Co.Ltd.,
39/40, Saradha Shopping Centre,
Workshop Road,
Simmakal, Madurai - 1.

... Appellant / 2nd Respondent

Vs.

1.Sounderiya

2.Minor Latha

(Minor 2nd respondent represented through her mother and
next friend 1st respondent Sounderiya)

3.T.G.Sundarrao

4.S.Kamalabai

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

5.S.R.Balasubramanian

... 5th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the award made in W.C.No.248 of 2006, dated 08.09.2008, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai.

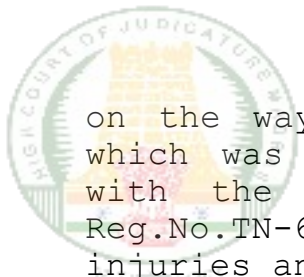
For Appellant : Mr.C.Karthick

For Respondents : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the award passed in W.C.No.248 of 2006, dated 08.09.2008, by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai, the appellant Insurance Company is before this Court.

2. The facts giving rise to the present appeal are that the deceased Paramasivam was working as a driver under the 5th respondent herein. On 15.01.2006, while the deceased was under the employment of the 5th respondent, drove the car, bearing Reg.No.TN-67-T-7386 and



on the way to Paramakudi, near Silambar Ayyanar Kovil, the car, which was insured with the appellant Insurance Company, collided with the Tamil Nadu State Transport Corporation bus, bearing Reg.No.TN-63-N-0680. As a result of which, the deceased sustained injuries and succumbed to injuries.

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3. The claimants, who are the legal heirs of the deceased Paramasivam, filed a claim petition in W.C.No.248 of 2006, before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai, claiming a sum of Rs.5,00,000/-, as compensation, for the death of the deceased Paramasivam.

4. Resisting the claim petition, the 2nd Respondent / Appellant Insurance Company filed counter affidavit stating that there was no employer-employee relationship between the deceased and the 5th respondent.

5. To substantiate the case, the 1st claimant examined herself as P.W.1 and marked 8 documents as Ex.P1 to Ex.P8. On the side of the 2nd respondent / appellant Insurance Company, neither any was witnesses examined nor any document marked.

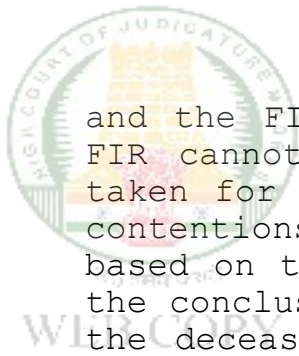
6. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai, during the course of the proceedings framed as many as four issues. Upon consideration of oral and documentary evidence, the Commissioner for Workmen Compensation held that the accident had occurred during the course of employment and awarded a compensation of Rs.4,27,355/- with interest at the rate of 12% p.a., and directed the appellant Insurance Company to pay the amount within a period of three months from the date of copy of that order.

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 Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai, has failed to note that, since there was no documentary proof to establish the contract of employment and no independent witness was examined. The appellant also denied the factum of employer-employee relationship and the death was due to the accident arose out of and in the course of employment.

9. I have heard the learned counsel appearing for the appellant Insurance Company and perused the materials on record.

10. The factum of accident and death is not in dispute. The employer has also made as party, but he remained *ex parte* before the Commissioner for Workmen's Compensation. The Commissioner has accepted the version of Soundariya, who has been examined as P.W.1



and the FIR, and granted the relief to the claimants. Though the FIR cannot be treated as gospel truth, however, the same can be taken for the purpose of contradictions and / or for accepting the contentions of the parties concerned. In the present case on hand, based on the evidence of P.W.1 and FIR, the Commissioner came to the conclusion that there was employer-employee relationship between the deceased and the 5th respondent in the appeal. Since it is a finding of fact, there is no substantial question of law involved. This Court is not inclined to accept the contention of the appellant herein.

11. In the result, the Civil Miscellaneous Appeal is dismissed. It is open to the authority concerned to conduct dependent enquiry at the earliest and disburse the amount to the eligible dependants, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

To

1. The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.NEETHIMOHAN, Advocate (SR-35506[F] dated 23/11/2021)

JUDGMENT MADE IN
C.M.A(MD) No.425 of 2009
19.11.2021

SE (CO)

TR(13.12.2021) 3P 5C