



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.08.2021

Delivered On : 04.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.134 of 2013

and

M.P.(MD)No.1 of 2013

WEB COPY

T.Senthilkumar

... Appellant/3rd Respondent

Vs.

1.A.Kathiresan

2.K.Sivabooshanam

3.T.Thangavel

4.P.Sivakumar

5.The United India Insurance Co. Ltd.,

Branch Office,

No.146-N, Kumar Complex,

Tiruchengode,

Namakkal District.

... Respondents/1st & 2nd Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of W.C. Act, to set aside the order in W.C.No.207 of 2002 dated 22.03.2010 on the file of the Commissioner Workmen's Compensation Act (DCL), Trichy.

For Appellant : Mr.R.Vijayakumar

For 5th Respondent : Mr.C.Jawahar Ravindran

For Respondents 3 and 4: Dismissed vide order dated 10.04.2019

For Respondents 1 and 2: No Appearance

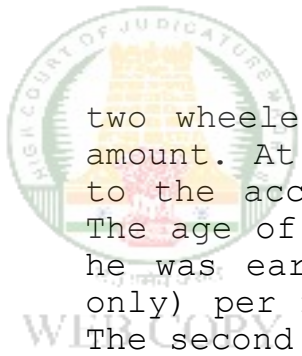
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed in W.C.No.207 of 2002 dated 22.03.2010, on the file of the Commissioner Workmen's Compensation Act(DCL), Trichy.

2.The appellant herein is the third respondent, the respondents 1 and 2 herein are the claimants and the respondents 3 to 5 herein are the respondents 1, 2 and 4 in the claim petition. The respondents 1 and 2 herein have filed a claim petition in W.C.No.207 of 2002, claiming a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

3.A brief substance of the claim petition in W.C.No.207 of 2002 is as follows:

The deceased Senthilkumar was working as the Manager in the Borewell company that belongs to the first respondent. On 14.08.2001, in the course of employment, the deceased travelled in a



two wheeler bearing registration No.TN-28-W-6555 for collection of amount. At about 05.30 p.m., the deceased met with an accident, due to the accident, he sustained head injuries and died on the spot. The age of the deceased at the time of the accident is 28 years and he was earning Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) per month. The first respondent is the owner of the vehicle. The second respondent is the insurer. The claimants claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

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

The deceased Senthilkumar was not employed by the first respondent. There was no relationship of employer and employee between the deceased and the first respondent. The deceased was working in T.S.Bore well company and the first respondent has no connection with T.S.Borewell Company. The accident was not during the course of employment. The age, income are all denied. The vehicle involved in the accident did not belong to the first respondent.

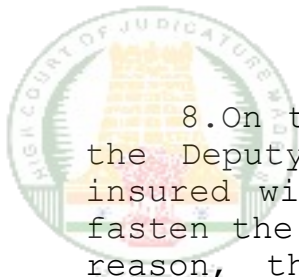
5.A brief substance of the counter filed by the third respondent therein is as follows:

The deceased was never employed by the third respondent. There was no relationship of employer and employee between the deceased and the third respondent. The third respondent is no way connected with the bore well company. The third respondent is an unnecessary party to the petition. The age, income are all denied. The claim is excessive.

6.A brief substance of the counter filed by the fourth respondent therein is as follows:

There is no insurance policy between the first respondent and the fourth respondent. The first respondent failed to produce any documents regarding the accident. The deceased was responsible for the accident. Four persons travelled in the vehicle at the time of the accident, which is a violation of policy conditions. The deceased was only a temporary employee. The age, income of the deceased are denied. The claimants are not dependants of the deceased. The claim is excessive.

7.The second respondent was set exparte. Two witnesses were examined and three documents were marked, on the side of the petitioners. One witness was examined and no document was marked, on the side of the respondents. After trial, the Tribunal has awarded a sum of Rs.4,18,460/- (Rupees Four Lakhs Eighteen Thousand Four Hundred and Sixty only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous



8.On the side of the appellant, it is stated that the order of the Deputy Commissioner of Labour is erroneous. The vehicle was insured with the fifth respondent. But the Labour Court failed to fasten the liability on the insurance company. Without assigning any reason, the Deputy Commissioner has fixed the liability on the appellant. The quantum is excessive. The Deputy Commissioner of Labour failed to consider that there is no relationship of employer and employee between the appellant and the deceased.

9.The points for consideration are as follows :-

"(i)Whether the deceased is a workmen under Section 2 (n) of the Workmen's Compensation Act, 1923 ?

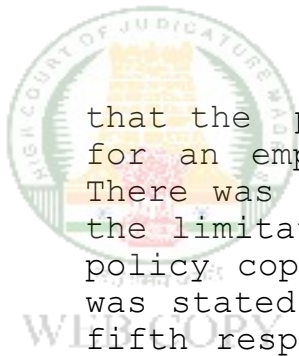
(ii)Whether the claim petition is maintainable before the Workmen's Compensation Commissioner when the deceased is admittedly a manager ?"

10.On the side of the appellant, it is stated that the accident was not during the course of employment and that the vehicle was insured with the fifth respondent. The fifth respondent alone is liable to pay compensation and that the petition under the Workmen's Compensation Act was not maintainable and that only a petition under the Motor Vehicles Act is maintainable.

11.On the side of the 5th respondent, it is stated that to claim compensation under the Workmen's Compensation Act, the relationship of employer and employee has to be proved. The deceased did not work under the third respondent. He was employed as a Manager. He had no connection with the two wheeler that belonged to the company. The deceased was not a labourer or a loadman and he was no way connected with the vehicle. He just travelled in the bike, which had nothing to do with his work. The deceased is not the employee of the appellant. The appellant had admitted in his counter that the deceased was not his employee. The claimants failed to prove whether the two wheeler belonged to the company or the appellant. The policy is only an act policy. No premium was paid for employees. There was no personal coverage except for the driver. The employer is liable to pay compensation.

12.In Ex.P1, FIR, it was stated that the deceased was working in T.S.Rick bore well company, which belongs to the appellant. The third respondent herein has admitted that the deceased was working in T.S.Rick Borewell Company. The third respondent herein is the son of the appellant, who is the owner of the T.S.Borewell Company. There is no rebuttal evidence. Hence, it is decided that the deceased was the employee of the appellant.

13.The claim of the appellant is that the vehicle was insured with the fifth respondent. But the claim of the fifth respondent is



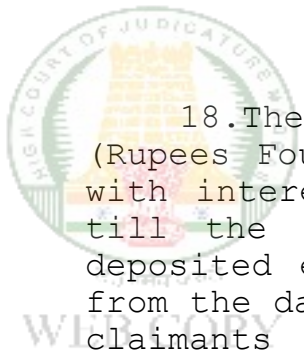
that the policy is only an act policy and no extra premium was paid for an employee and that there is no coverage for the deceased. There was no evidence on the side of the fifth respondent regarding the limitation in the policy or regarding the policy violation. The policy copy was not filed even by the fifth respondent. No reason was stated by the Deputy Commissioner of Labour for exonerating the fifth respondent. Since the policy certificate was not produced by the appellant or by the fifth respondent, violation of policy conditions could not be decided.

14.The appellant claimed that the compensation awarded by the Deputy Commissioner of Labour is excessive and that no steps was taken on the side of the appellant to produce the salary particulars or the salary register before the Deputy Commissioner of Labour. The contention of the claimants is that the deceased was earning Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) per month, but there is no documents to prove the same. The Deputy Commissioner has fixed Rs.4,000/- (Rupees Four Thousand only) as notional monthly income. Hence, it is decided that the monthly income fixed by the Deputy Commissioner of Labour is reasonable. The Deputy Commissioner has fixed the age of the deceased on the basis of the post mortem report, Ex.P2. The fixation of the age of the deceased is reasonable. Considering these facts, it is decided that the compensation awarded by the Deputy Commissioner is reasonable.

15.The appellant has raised a new ground stating that the deceased was not a workman under Section 2(n) of the Workmen's Compensation Act, as the claimants themselves claimed that the deceased was a Manager. No document was filed to show the status of the deceased in the company. Whether he worked as a Manager or as a Labourer could not be decided without the production of relevant documents. The appellant was the owner of the company. It was his duty to produce the documents. Moreover, the appellant has not raised any such points before the Deputy Commissioner of Labour. Hence, it is decided that this new contention of the appellant is not sustainable.

16.Since the insurance policy was not produced either by the appellant or by the fifth respondent, the violation of policy condition cannot be decided. Hence, it is decided that the fifth respondent is also liable to pay compensation. If there is no policy coverage, the appellant is at liberty to proceed against the third respondent.

17.In the result, this Civil Miscellenaous Appeal is disposed of. The respondents 1 and 2 herein are entitled to a sum of Rs.4,18,460/- (Rupees Four Lakhs Eighteen Thousand Four Hundred and Sixty only) as compensation with interest at the rate of 12 % from the 30th date of the award till the date of realization.



18.The fifth respondent is directed to deposit Rs.4,18,460/- (Rupees Four Lakhs Eighteen Thousand Four Hundred and Sixty only) with interest at the rate of 12 % from the 30th date of the award till the date of realization with cost 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 claimants are permitted to withdraw their respective share with proportionate interest after deducting any amount received by them earlier. Amount, if any deposited by the Appellant shall be refunded to the Appellant. The claimants are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// 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

The Deputy Commissioner of Labour,
Commissioner Workmen's Compensation Act,
Trichy.

COPY TO:-

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

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-31064[F] dated 04/10/2021)

C.M.A. (MD)No.134 of 2013

04.10.2021

GC(12.10.2021) 5P 5C