



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.559 of 2011

M.P. (MD) .No.2 of 2011

WEB COPY

The New India Assurance Company Limited,
Moovattupulai,
Kerala State.

... Appellant

vs.

1.Rathinam

2.Mariapushpam

3.Mariamallika

4.Selvakani

5.Yobu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, to set aside the award dated 30.09.2010 passed by the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli in W.C.No.45 of 2007.

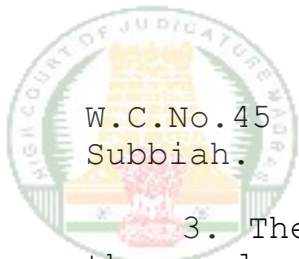
For Appellants : Mr.B.Vijay Karthikeyan

For Respondents : M/s.Maria Vinola
for M/s.A.Elis Chitra Devi
for RR1 to 4
No-appearance for R5

J U D G M E N T

The appellant filed this appeal to set aside the order dated 30.09.2010 passed in W.C.No..45 of 2007 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli.

2. The deceased namely Joseph Subbiah was working as a cleaner under the fifth respondent, who is the owner of a tempo bearing Registration No.TN 32A 8170. On 17.03.2007, at about 11.00 a.m., the deceased had gone along with one Ravi (driver), Subbiah, Annapushpam and Muthulakshmi, for loading red soil in the fifth respondent Tempo van. When they were loading soil in the tempo van, the soil suddenly fell on the deceased and the deceased sustained injuries and died on the way to Hospital. Hence, the legal heirs of the deceased filed



W.C.No.45 of 2007 claiming compensation for the death of Joseph Subbiah.

3. The Deputy Commissioner of Labour, Madurai, after analyzing the oral and documentary evidences, awarded a sum of Rs.1,49,055/- and directed the Insurance Company to pay the same. Questioning the liability fixed on them, the appellant has filed this appeal.

4. The learned counsel appearing for the appellant submitted that as per the First Information Report, the deceased was the father-in-law of the owner of the vehicle and that there was no proof for employer-employee relationship between them. The First Information Report was lodged by the insured/owner of the vehicle himself. Further, at the time of accident, the vehicle was not in motion and hence, the Insurance Company cannot be fastened with liability. Without considering all these facts, the Tribunal directed the appellant to pay compensation to the claimants.

5. The learned counsel appearing for the respondent Nos.1 to 4 submits that there is no enactment that relatives should not be in employer - employee relationship and the Insurance Company in order to escape from its liability has filed this appeal. The third respondent and one Muthulakshmi are eye witnesses to the incident and they have also filed proof-affidavits before the trial Court regarding the incident.

6. On 27.04.2011, this Court admitted the Civil Miscellaneous Appeal by raising the following substantial questions of law:

"Whether the Insurance company is liable to pay compensation under the Workmen Compensation Act when there is no employer-employee relationship between the deceased workmen and the owner of the vehicle?"

2. Whether the Insurance Company is liable under the Workmen Compensation Act, when the vehicle was not in motion at the time of the accident?

3. Is not the F.I.R a reliable piece of evidence in the claim proceedings under the Workmen Compensation Act?"

8. It is stated by the respondents/claimants that the deceased was employed under the fifth respondent in the tempo van as cleaner and he died during the course of employment, since the soil fell on him. However, the respondents/claimants have not produced any proof for employer-employee relationship between the deceased and the fifth respondent. If suppose the deceased was working as a cleaner as stated by the claimants, there is no necessity for him to load soil in the vehicle. Hence, the deceased is also responsible for the accident. In such facts and circumstances, this Court is inclined to fix 50% liability on the deceased. Since the vehicle is insured with the appellant, the appellant is directed to pay 50% of



the award amount. However, this Court is not inclined to interfere with the quantum fixed by the Deputy Commissioner of Labour, therefore, the award passed by the Labour Court is confirmed.

9. It is brought to the notice of this Court that the appellant has already deposited the entire award amount. Therefore, the appellant is permitted to withdraw 50% of the award amount.

10. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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

1.The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Tirunelveli.

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

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-38645[F] dated 14/12/2021)

+1 CC to M/s.A.ELISCHITRA DEVI, Advocate (SR-38753[F] dated 15/12/2021)

**CMA (MD) No.559 of 2011
14.12.2021**

RD(11.03.2022) 3P 6C