



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.03.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.472 of 2013
and
MP(MD)No.1 of 2013

M/s.United India Insurance Company Limited,
Thenkasi (Tk) : Appellant/2nd Respondent

Vs.

1.Tmt.C.Ranjitham
2.C.Vasanthi : R1 and R2/Petitioners
3.Thiru.K.Chelliah Nadar : 3rd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act against the award passed by the Deputy Commissioner for Workmen's Compensation, Tirunelveli, made in WC No.47 of 2009, dated 30.11.2010.

For Appellant : Mr.C.Jawahar Ravindran

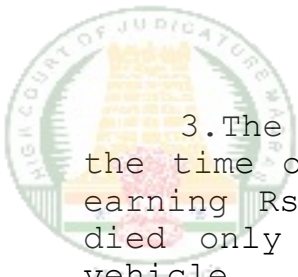
For R1 and R2 : Mr.A.Faroz Khan
(Legal Aid Counsel)

For 3rd Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Deputy Commissioner for Workmen's Compensation, Tirunelveli, in WC No.47 of 2009, dated 30.11.2010.

2.The short facts of the case is that the deceased Ramesh was working as Driver in the Maxi Cab TN-74-A-2898 belonging to the 3rd respondent/1st respondent and on 17.01.2009 at about 17.15 hours, when the deceased Ramesh was driving the Van on Tirunelveli-Tiruchendur Main Road, near Subramaniapuram, the Van was dashed against the Bus TN-72-P-3993 came from the opposite side and as a result of which, the driver of the Maxi Cab Van sustained grievous injuries all over the body and died on the way to the hospital. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.4,11,900/- for the death of the deceased.



3.The claimants have stated that the deceased was 31 years at the time of accident and he was working as Driver, thereby he was earning Rs.5,000/- per month. It is alleged that the said Ramesh died only due to the negligence of the driver of the offending vehicle.

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4.The appellant Insurance Company resisted the application by filing a detailed counter. The main contention of the appellant Insurance Company was that there was a violation of the policy conditions and therefore, they are not liable to pay the award amount.

5.Before the Deputy Commissioner of Labour, the claimant marked Exs.A1 to A9 and on the side of the side of the appellant insurance company Exs.R1 and R2 were marked.

6.The Deputy Commissioner of Labour on the basis of the evidence, has awarded a sum of Rs.4,11,900/-. Challenging the award, the appellant has filed the present appeal.

7.Heard both sides and perused the materials available on record.

8.The dispute is with regard to liability. The learned counsel appearing for the appellant Insurance Company argued that there is no employer-employee relationship between the deceased and the 3rd respondent herein and admittedly, the deceased is the son of the 3rd respondent/owner of the vehicle and only to claim compensation, it is falsely alleged that the deceased was employed as 'Driver' and the Workmen's Compensation Tribunal failed to note that there is no insurance coverage for the death of the deceased, being the son of the 3rd respondent/owner of the vehicle and the Workmen's Compensation tribunal ought to have exonerated the appellant from paying the liability on the ground of contributory negligence on the part of the deceased and the terms and conditions of the insurance policy of the appellant Insurance Company is vitiated and the owner of the vehicle has violated the terms and conditions of the insurance policy and prays that the Civil Miscellaneous Appeal has to be allowed. Per contra, the learned counsel for the respondents 1 and 2/claimants submitted that the award of the tribunal is reasonable, which does not warrant any interference of this court.

9.The learned counsel appearing for the appellant submitted that at the time of accident, 22 persons were travelling in the offending vehicle, but permission was given only for 1 + 12 persons and hence, there is violation of policy condition.

10.On perusal of the policy copy, it is stated only premium was paid for 12 persons. But, in this case 22 were were travelling in the offending vehicle. Hence, it amount to violation of policy



condition.

11. It is not in dispute that the deceased was an employee under the 3rd respondent/employer and he sustained injury arising out of and in the course of employment. Indisputably, the vehicle which was involved in the accident had coverage of insurance on the date of accident. The sole ground upon which the impugned judgment assailed by the appellant is that on the date of accident the vehicle was permitted to be used for carriage by carrying passengers, in blatant violation of the policy conditions and therefore, the appellant is not liable to pay the compensation. But as rightly contended by the counsel for the claimants, the law is well settled that even if there is any violation of the policy conditions, the Insurance Company has to pay compensation and recover the amount from the insured. Therefore, the appellant is bound to pay the compensation to the claimants and recover the same from the insured.

12. In the result, the Civil Miscellaneous Appeal is partly allowed with a direction that the Appellant Insurance Company shall pay compensation to the claimants and thereafter recover the same from the insured as per the mode incorporated in paragraph 7 of Shri Nanjappan's case (cited supra). As the Appellant Insurance Company has already deposited entire compensation amount, the claimants are permitted to withdraw the entire amount, by making necessary application before the learned Deputy Commissioner of Labour. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Workmen Compensation Tribunal, Tirunelveli.



2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.A.FEROZ KHAN, Advocate (SR-8789[F] dated 04/03/2021)

Judgement made
in CMA(MD)No.472 of 2013
04.03.2021

SSS(CO)
TR(09.08.2021) 4P 5C