



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05.10.2021
DELIVERED ON	11.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.M.A. (MD) .No.186 of 2019

WEB COPY

1.K.Kumaravel
2.K.Valarmathi
3.K.Nagajothi
4.Minor.K.Kamala ... Appellants/Applicants
[Minor 4th petitioner represented through her
father and next friend first petitioner herein]

Vs.

R.Moorthy ... Respondent/Opposite Party

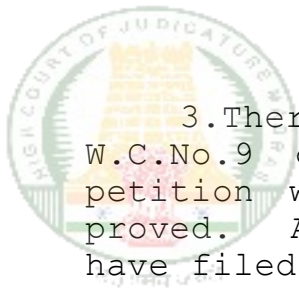
PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the award, dated 18.05.2018 made in W.C.No.9 of 2013 on the file of the Commissioner for Workman Compensation (Commissioner for Labour), Madurai and allow this appeal by way of awarding compensation to the Claimants.

For Appellants : Mr.D.Senthil
For Respondent : Mr.S.Srinivasa Ragavan

ORDER

This Civil Miscellaneous Appeal has been filed by the appellants to set aside the award, dated 18.05.2018 in W.C.No.9 of 2013 on the file of the Commissioner for Workman Compensation (Commissioner for Labour), Madurai.

2. The case of the appellants herein is that the deceased Dinesh Kumar is son of 1st and 2nd appellant herein. The deceased Dinesh Kumar worked as Driver of Fork lift vehicle under the respondent herein. On 07.03.2012, at 04.00 p.m., the deceased Dinesh Kumar, carefully drove the For life vehicle in order to shift the bricks in the campus of Suganya Chambers belonging to opposite party. While driving the vehicle by the deceased Dinesh Kumar, the vehicle capsized and the deceased fallen on the floor and the vehicle fallen on him. Immediately the other workers removed the vehicle and the said Dinesh Kumar was taken to Government Hospital, Kamuthi. After examination of the said Dinesh Kumar by the Doctors at the Government Hospital, the Doctors declared him as already dead. The accident took place in the course of employment under the respondent herein/opposite party.



3. Therefore, the Claimants have filed a claim petition in W.C.No.9 of 2013 for claiming compensation. The said claim petition was dismissed on the ground that employment was not proved. Aggrieved by the order, dated 18.05.2018, the claimants have filed this appeal.

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4. This Civil Miscellaneous Appeal is filed on the ground that the findings of the learned Commissioner of Labour that the claimants were not proved that the deceased sustained injuries in the accident arising out of in the course of employment is against law. The learned Commissioner of Labour dismissed the claim application, even without considering the deposition of P.W.2 who is occurrence witness and the same is liable to be quashed. The learned Commissioner of Labour dismissed the claim application without properly considering Ex.P.6, Form-IV issued by the Inspector of Factories and in which it was stated that the respondent is the owner of the brick chamber.

5. Heard Mr.D.Senthil, learned counsel appearing for the appellants and Mr.S.Srinivasa Ragavan, learned counsel appearing for the respondent.

6. The license which was issued to the respondent/employer was marked as Ex.P.6. It discloses that the license was issued for Suganya Chamber and the respondent is the owner of the chamber. The document was not objected by the respondent herein. The license also issued till 31.12.2013.

7. As per charge sheet/Ex.P.7 the deceased Dinesh Kumar died during his employment.

8. The co-worker was examined as P.W.2. He deposed that the deceased Dinesh Kumar was his co-worker at the time of accident. He also deposed that he went to the respondent's chamber and saw that the deceased was under the Fork lift vehicle.

9. The respondent herein/owner of the was examined as R.W.1. He stated that the Suganya Chamber has no way connected with him. But Ex.P.6 clearly proves that the respondent herein is the owner of the chamber at the time of accident. He also admitted his daughter name is Sunganya.

10. As per the First Information Report, the complainant is also a co-worker of the deceased and both of them were worked under the respondent's Brick Chamber as Fork Lift drivers.

11. As per Ex.P.6/License, Ex.P.7/charge sheet and evidence of P.W.2, the claimants have clearly proved that the accident was occurred during the course of employment under the respondent's Chamber.



12. The Section 3 of Employee's Compensation Act, 1923 is extracted hereunder:

"3.Employer's liability for compensation:-

(1) If personal injury is caused to a (employee) by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of this Chapter".

13. Therefore, the employer/respondent herein is liable to pay compensation.

14. The deceased Dinesh Kumar was employed as driver under the respondent's Brick Chamber. His monthly income is fixed as Rs.7,000/-. There is no evidence for whether he is a permanent employee so for further prospectus 40% to be added Rs.7,000/- x 40% = Rs.2,800/-. So, income of Rs.9,800/- per month. Annual income Rs.9,800/- x 12 = Rs.1,17,600/-. At the time of accident, the deceased Dinesh Kumar was aged about 21 years. He is a Bachelor. So, for personal expenses 50% should be deducted. In Rs.1,17,000/-, 50% = Rs.58,500/-per annum.

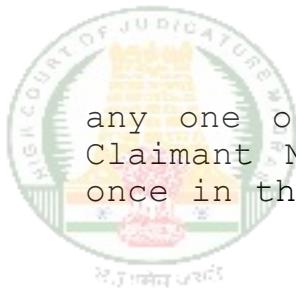
15. Since the age of deceased in 21 years, the multiplier should be applied as 18.

16. Accordingly, the claimants are entitled for compensation as follows:

Sl.No.	Name of the Head	Amount awarded by this Court
1	For Loss of income [Rs.58,500/- x 18]	Rs.10,53,400/-
2	Loss of Love and affection for claimant Nos.1 & 2 [each Rs.40,000/-]	Rs. 80,000/-
3	Loss for funerals	Rs. 25,000/-
4	Loss of articles	Rs. 5,000/-
	Total	Rs.11,63,400/-

with interest at 7.5% p.a., from the date of claim petition till the date of realization.

17. Finally, this Civil Miscellaneous Appeal is allowed by setting aside the award, dated 18.05.2018 made in W.C.No.9 of 2013 on the file of the Commissioner for Workman Compensation (Commissioner for Labour), Madurai. In the award amount, the mother/2nd claimant is entitled to get Rs.5,63,400/- and the father/1st claimant is entitled to get Rs.4 lakhs and the 3rd and 4th claimants are entitled for Rs.1 Lakh, each, and the amount of the minor claimant is to be deposited in



any one of the Nationalized Bank till she attains majority. The Claimant Nos.1 & 2 are entitled to receive the accrued interest once in three months from the bank directly. No costs.

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

The Commissioner for Workman Compensation
(Commissioner for Labour),
Madurai.

Copy to

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-34213[F] dated 11/11/2021)

+1 CC to M/s.D.SENTHIL, Advocate (SR-34136[F] dated 11/11/2021)

Order made in
C.M.A. (MD) .No.186 of 2019
11.11.2021

SMV (CO)

RS/PM (23.11.2021) 4P 6C