BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.02.2021
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD) No.289 of 2020
and
CMP(MD).Nos. 3780 and 5277 of 2020

The Manager
Iffco Tokio General Insurance Company Limited
Kingstone Park II Floor
No.19/1, Ramalinga Nagar, Woraiyur
Trichy 620 017 ... Appellant/2nd respondent

vs.

1.M.Ayyammal
2.M.Murugapandi ...Respondents 1 & 2/Petitioners
3.R.Muthukaruppan ...Respondent No.3/Respondent No.1

Prayer: This Civil Miscellaneous Appeal has been filed under Section 30 of the Employee Compensation Act, to set aside the order dated 27.02.2020 passed in E.C.No.26 of 2017 on the file of the Commissioner for Employees Compensation at Dindigul insofar as liability to pay the compensation and liability to pay the interest for the defaulted period is concerned by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.V.Sakthivel

For R1 and R2 : Mr.N.Sudhagar Nagaraj
For R3 : Mr.R.Shankar Ganesh

J U D G M E N T

This appeal has been filed to set aside the order dated 27.02.2020 passed in E.C.No.26 of 2017 on the file of the Commissioner for Employees Compensation at Dindigul insofar as liability to pay the compensation and liability to pay interest for the defaulted period is concerned by allowing the Civil Miscellaneous Appeal.

2. The brief facts of the case is that the respondents 1 and 2 here filed a claim petition in E.C.No.26 of 2017 before the Commissioner of Workmen Compensation, Dindigul claiming a sum of Rs.10,00,000/- as compensation for the death of their son Pulimuthu in an accident during the course of his employment. After full trial, the Commissioner has awarded a sum of Rs.9,01,000/- as compensation with 12% interest per annum, against which, the Insurance Company has preferred this appeal.

3.The learned counsel for the appellant/Insurance Company would submit that except P.W.1-father of the deceased, no other witnesses had given evidence that the deceased Pulimuthu had worked as Cleaner under the third respondent and the Insurance Company has not issued any coverage to employee/cleaner as claimed by the claimants. The learned counsel would further submit that the deceased was travelled as a gratuitous passenger in the third respondent's vehicle bearing registration No.TN-58-AZ-2588 and therefore was not covered under the policy and he is not entitled to get any compensation under the provisions of the Employees Compensation Act. As per Act Policy, premium has been paid in respect of driver alone. The respondents 1 and 2 ought to have independently proved the employer-employee relationship between the deceased and the third respondent herein. In any event, the order passed by the learned Commissioner is without appreciation of law and therefore, it is liable to be set aside.

4.The learned counsel appearing for the respondents strenuously submitted that after elaborate enquiry, the Commissioner has awarded a sum of Rs.9,01,000/- as compensation with 12% interest per annum and therefore, the same need not be interfered with.

5. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record.

6.Perusal of record shows that the respondents 1 and 2 have filed a claim petition in E.C.No.26 of 2017 before the Commissioner of Workmen Compensation, Dindigul, claiming a compensation of Rs.10,00,000/- for the death of their son Pulimuthu in an accident during the course of his employment where the Commissioner has awarded a sum of Rs.9,01,000/- with 12% interest per annum, against which, the Insurance Company has preferred this appeal. According to the appellant, except the father of the deceased no one has deposed that the deceased Pulimuthu worked as cleaner under the third respondent. But, the F.I.R and other connected documents would show that the deceased as an employee of the third respondent herein and the learned Commissioner finding that there was no contrary evidence let in by the appellant, it found that the deceased Pulimuthu was an employee under the third respondent. Perusal of Ex.R1- copy of the Insurance Policy, the Tribunal found that the appellant herein has taken a package policy, which does not require extra premium for the cleaner and since the policy was in force on the day of accident held that the appellant is liable to pay compensation by relying on the Judgment reported in ***M/s.United India Insurance Company-V.B.Suresh Kumar- 2019*** has granted compensation to the respondents 1 and 2/ claimants, where, I do not find any infirmity and the award passed by the Commissioner for Employees Compensation at Dindigul is hereby confirmed.

7.It is stated that the appellant has already deposited the entire award amount with interest and costs to the credit of the claim petition. Therefore, the respondents 1 to 2 herein/claimants are directed to withdraw the entire amount with interest and costs in the ratio apportioned by the Commissioner, without filing formal permission petition before the Commissioner for Employees Compensation at Dindigul.

8.With the above direction, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Commissioner for Employees Compensation
at Dindigul.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-6626[F] dated 23/02/2021)

+1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-7369[F] dated 25/02/2021)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-7356[F] dated 25/02/2021)

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