



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1004 of 2016
and
CMP(MD)No.9039 of 2016

M/s.Bharti Axa General Insurance Company Limited,
Metro Plaza, 2nd Floor,
162, Annasalai, Chennai. : Appellant/2nd Respondent

Vs.

1.Tmt.Subbammal
2.Kumarandi : R1 and R2/Claimants
3.Stephen Thomas Walker : 3rd Respondent/
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the judgment and decree made in W.C.No.34 of 2011, dated 01.03.2016 on the file of the Deputy Commissioner of Labour, Madurai.

For Appellant : Mr.G.Maruthiah
For R1 and R2 : Mr.G.Kandhavadivelan
For 3rd Respondent : No appearance

J U D G M E N T

This appeal has been filed challenging the judgment and decree made in W.C.No.34 of 2011, dated 01.03.2016 on the file of the Deputy Commissioner of Labour, Madurai.

2.The respondents 1 and 2 herein laid a claim before the Deputy Commissioner of Labour, Madurai contending that on 06.12.2010 when the deceased Jeganathan, after unloading the broiler chicken in the Lorry TN-59-AE-0157 at the shop of Arasan Chicken Centre, Alanganallur, returning on the road side, at that time, the driver of the lorry drove it on the reverse and dashed against the deceased. In that process, he sustained injury on the back of the head and in the hospital, he died on the next day. The legal heirs of the deceased filed a claim petition seeking compensation of 5,00,000/- contending that he was an employee



under the 3rd respondent/1st respondent Lorry and the accident occurred in the course of the employment.

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

4.Before the Deputy Commissioner of Labour, on the side of the claimants, 2 witnesses were examined and marked Exs.A1 to A11 and on the side of the side of the appellant Insurance Company, 2 witnessed were examined and Exs.R1 and R2 were marked.

5.The Deputy Commissioner of Labour on the basis of the evidence, has awarded a sum of Rs.6,15,361/-. Challenging the award, the appellant has filed the present appeal.

6.The appellant has filed this appeal only challenging their liability and they have have not questioned the quantum awarded by the Deputy Commissioner of Labour.

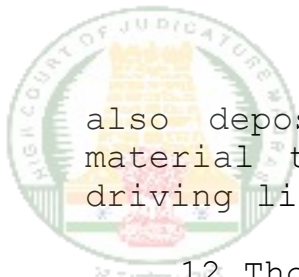
7.Heard the learned counsel appearing for the parties and perused the materials available on record.

8.Even though several grounds were raised in the grounds of appeal, it is mainly argued by the learned counsel for the appellant that the driver of the offending vehicle had not possessed valid and effective driving licence at the time of accident and hence, the Insurance Company is not liable to pay the compensation.

9.Per contra, the learned counsel for the Respondents 1 and 2/claimants submitted that the claimants have proved that the deceased was an employee under the 3rd respondent Lorry and he died in the course of employment and even if, there is any violation of the policy conditions, the Insurance Company has to pay compensation and recover the amount from the insured.

10.It is needless to say that in this case, the competent person to speak about the driving licence is the owner of the offending vehicle. But in this case, the owner of the offending vehicle chosen to remain ex-parte and hence, an adverse inference can be drawn to the effect that the driver of the said vehicle did not possess valid and effective driving licence.

11.In this case, RW1 the official of the Appellant Insurance Company. He deposed that the driver of the offending vehicle did not possess valid and effective driving licence at the time of accident. RW2 is the official of Regional Transport Authority. He



also deposed that the driver, who was on the wheels at the material time of accident, did not possess valid and effective driving licence to drive the vehicle.

12.Though, the learned Deputy Commissioner of Labour has relied on the defence as well as the evidence adduced by the appellant Insurance Company, failed to come to the conclusion with regard to the validity of driving licence and the liability of the appellant.

13.It is not in dispute that the deceased was an employee under the 3rd respondent/employer and he succumbed to 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 driver of the offending vehicle did not possess valid and effective driving licence, which amounts to violation of policy conditions and on that score, shall exonerate the appellant from the liability and therefore, the appellant is not liable to pay the compensation.

14.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 respondents 1 and 2/claimants and recover the same from the insured.

15.In view of the foregoing discussion, the Civil Miscellaneous Appeal is partly allowed with a direction that the Insurance Company shall pay compensation to the respondents 1 and 2/claimants and thereafter recover the same from the insured as per the mode incorporated in Shri Nanjappa's case. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To
The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour),
Madurai.

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Madurai Bench of Madras High Court, Madurai.

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