BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.12.2020

PRONOUNCED ON : 27.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1012 of 2016

AND

C.M.P(MD)No.9095 Of 2016

The Divisional Manager,
United India Insurance Company Limited,
No.52, South Masi Street,
Madurai -1. ...Appellant/Respondent No.2

Vs.

1.Amminikoshi
2.K.Sajan
3.K.Mini
4.K.Paju : Respondents 1 to 4/Petitioners
5.M.Natarajan : Respondent No.5/ 1st Respondent

PRAYER:Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 to set aside the order dated 21.12.2015 of the Commissioner for Workmen's Compensation, Madurai passed in W.C.No.111 of 2011.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents Nos.1 to 4 : Mr.S.Ramasamy
For Respondent No.5 :Mr.P.Venkatesan

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act, challenging the order passed in W.C.No.111 of 2011, dated 21.12.2015, on the file of the Commissioner for Workmen's Compensation, Madurai.

2.The Appellant / Insurance Company, which was made liable to pay the compensation of Rs.1,97,430/- to the claimants, who are the legal heirs of the deceased Koshi Chacko, who died in an accident occurred on 08.05.2010, challenged the liability mulcted on it.

3.The case of the claimants is that the deceased Koshi Chacko was working as a Security Guard, under the 5th respondent / 1st respondent, that Koshi Chacko was deputed to work as a Security Guard in Muthoot Bank at Puliyammala, Kerala and that on 08.05.2010, he met with an accident by hitting with an auto bearing Registrssation No.KL37-4234 in front of Muthoot Banjat, Puliyammala, that he was immediately taken to the hospital at Kattappana, where he was declared dead and that the said Koshi Chacko met with an accident in the course of and arising out of his employment under the 5th respondent and died consequently.

4.The defence of the Appellant / Insurer is that the Claimants / Petitioners have to establish that there existed employer and employee relationship between the 5th respondent and the deceased Koshi Chacko, that the Insurer had not received any intimation from the 5th respondent about the alleged accident nor any claim form was submitted to the Insurer and that therefore, the Insurer is not liable for payment of the compensation.

5.The Claimants have examined the 2nd Claimant Sajan as PW1 and exhibited 9 documents are ExP1 to ExP9. The 5th Respondent/1st Respondent has adduced neither oral nor documentary evidence. On the side of the Appellant/ Insurer, they have examined their Executive Officer P.Murugesan as RW1 and adduced no documentary evidence.

6.The learned Commissioner for Workmen's Compensation, Madurai, upon considering the evidence, both oral and documentary, has passed the impugned order, dated 21.12.2015, mulcting liability on the Insurer and directing them to pay a compensation of Rs.1,97,430/- to the Claimants. Aggrieved over the said order, the Insurer has come forward with the present appeal.

7.The Appeal was admitted on the following substantial questions of law;

> *1.Whether the learned Commissioner has failed to note that the claimants and the insured have failed to produce any document to show the employer-employee relationship between the deceased Koshi Chacko and the 5th respondent herein?*
>
> *2.Whether the learned Commissioner is correct in deciding the employer -employee relationship, without any evidence?*
>
> *3. Whether the learned Commissioner has failed to notice that the insured has violated the terms and conditions of the insurance policy?*

8.The learned Counsel for the Appellant would strongly contend that the Commissioner has erroneously held that the deceased Koshi Chacko was employed under the 5th respondent as Security Guard, that neither the claimants nor the 5th respondent had produced any documents to prove the employer- employee relationship allegedly existed between the deceased and the 5th respondent, that the learned Commissioner has also failed to consider that the 5th respondent has not even produced the copy of the claim form, alleged to have been submitted by him and that the learned Commissioner has also failed to note that the 5th respondent in collusion with the claimants has stated that the deceased was employed under him.

9.The learned Counsel would further contend that the learned Commissioner has failed to consider that the 5th respondent has violated the terms and conditions of the insurance policy, that the Insured has not even intimated about the accident and the death of the employee, that the Tribunal without considering the evidence in proper perspective has fastened the liability on the Appellant/ Insurer and that therefore, the same is liable to be set aside.

10.Admittedly, the 1st Claimant is the wife, 2nd and 4th Claimants are the sons and the 3rd Claimant is the daughter of the deceased Koshi Chacko. It is the specific case of the Claimants that the said Koshi Chacko was working as Security Guard in M/s.Sharp Security Services owned by the 5th respondent / 1st respondent, that he was deputed to work as Security Guard to Muthoot Bank at Puliyammala, Kerala State and that the accident was occurred, while he was working as Security Guard at Muthoot Bank.

11.No doubt, the 5th respondent has entered appearance before the Tribunal and filed a counter statement, whereunder, he has specifically admitted that the deceased Koshi Chacko was working as Security Guard in their concern and that he had met with an accident, while working as Security Guard in Muthoot Bank. As already pointed out, the 5th respondent has not adduced any evidence before the Tribunal.

12.The learned Commissioner, by mainly relying on the admission made by the 5th respondent in his counter statement about the employment of the deceased under him and on considering the evidence of the Claimants, came to the conclusion that the deceased was working as Security Guard under the 5th respondent and met with an accident and died in the course of and out of the employment.

13.As rightly pointed out by the learned Counsel for the Appellant, the Tribunal has not dealt with the collusion alleged to have been entered into between the Claimants and the 5th Respondent. Except the pleadings in the counter statement, the 5th Respondent has not chosen to produce any iota of evidence, to prove that the deceased was employed under him and that the deceased was deputed to attend Security Guard work at Muthoot Bank. It is pertinent to note that the Claimants have also not chosen to summon the documents from the 5th respondent to show the employment of the deceased under the 5th respondent. PW1, son of the deceased, in his cross examination would admit that they have not produced any appointment order given by the 5th respondent to his father and that they have not filed any salary slip or salary bill issued by the 5th respondent. Though it was alleged that the deceased was working as Security Guard in Muthoot Bank at the time of accident, the Claimants have also not taken any steps to summon any staff or official from the Muthoot Bank nor taken any steps to summon the attendance register nor any order or letter deputing the deceased to the Muthoot Bank by the 5th respondent.

14.No doubt, the Claimants have issued a legal notice under ExP6 to the Appellant as well as the 5th respondent and that the notice sent to the 5th respondent was returned as un-served with the reason 'left' under ExP7. But the Appellant has sent a reply under ExP9, disputing their liability. Considering the above, as rightly contended by the Appellant's side, neither the Claimants nor the 5th Respondent, has produced any iota of evidence to prove the alleged employment of the deceased under the 5th Respondent.

15.It is the specific case of the Appellant / Insurer that the 5th respondent has not submitted any claim form nor any intimation about the alleged accident.

16.At the time of arguments before this Court, an attempt was made by the learned Counsel for the 5th Respondent that the information about the accident and the claim form were submitted to the agent of the Insurer/ Appellant. But there is absolutely no pleading or any evidence in this regard.

17.The 5th Respondent has not even furnished the name and other particulars of the agent, with whom the claim form was submitted. Moreover, the 5th Respondent has also not chosen to examine the alleged agent before the tribunal.

18.As rightly contended by the learned Counsel for the Appellant, in ExA5/Policy, Condition No.4 of the Terms and Conditions of the insurance policy contemplates that in any event of any occurrence, which may give rise to claim under that policy, insured shall as soon as possible give notice thereof to the Company with full particulars and every letter, claim, writ summons and process shall be notified or forwarded to the company immediately on receipt of notice and that notice shall also be given to the company immediately, the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in connection with any such occurrence as aforesaid.

19.As already pointed out, the 5th Respondent has not even produced the copy of the claim form alleged to have been submitted to the agent of the Insurer. As rightly contended by the learned Counsel for the Appellant, despite the receipt of the legal notice from the claimants and filing of the claim petition, the 5th Respondent has not chosen to submit the claim form or other particulars relating to the accident and the employment of the deceased under him and his deputation to the Muthoot Bank at Kerala.

20.Considering the above, this Court has no hesitation to hold that the Tribunal, in the absence of any evidence, has recorded the findings that there existed relationship of employer - employee between the 5th Respondent and the deceased and the accident had occurred in the course of and out of his employment and consequently, mulcted the liability on the appellant mechanically and that therefore, the same is liable to be set aside and the substantial questions of law are answered in favour of the Appellant. Consequently, this Court concludes that the Civil Miscellaneous Appeal is liable to be allowed. Considering the other facts and circumstances, the parties are to be directed to bear their own costs.

21. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order, dated 21.12.2015 in W.C.No.111 of 2011 on the file of the Deputy Commissioner of Labour, Madurai is set aside. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk/das

To

1.The Commissioner for Workmen's Compensation,
Madurai

2.The Deputy Commissioner of Workmen Compensation,
Madurai.

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

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AND
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sj(CO)
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