



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.09.2021

Delivered On : 07.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.416 of 2016

WEB COPY

M/S.United India Insurance Company Limited,
Divisional Office - 3,
Seethalakshmi Complex,
Tirunagar,
Madurai - 6.

..Appellant/Respondent 2

Vs.

1.Pandiammal	..Respondent 1/1 st Petitioner
2.Pandeeswari	..Respondent 2/2 nd Petitioner
3.Palpandi	..Respondent 3/3 rd Petitioner
4.Minor.Muthupandi	..Respondent 4/4 th Petitioner
5.Minor.Saranya	..Respondent 5/5 th Petitioner
(Minor 4 and 5 petitioners represented through their mother and natural guardian first petitioner)	
6.Panchavarnam	..Respondent 6/6 th Petitioner
7.S.Saroja	..Respondent 7/1 st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act,1923 to set aside the order dated 19.01.2016 of the Deputy Commissioner for Workmen's Compensation, Madurai passed in W.C.No.49 of 2011.

For Appellant	: Mr.C.Jawahar Ravindran
For Respondents 1,2,4and5	: Mr.M.Sarangan
For Respondents 3,6 and 7	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in W.C.No.49 of 2011 dated 19.01.2016, on the file of the Deputy Commissioner for Workmen's Compensation, Madurai.

2.The appellant herein is the second respondent, the respondents 1 to 6 herein are the claimants and the seventh respondent herein is the first respondent in the claim petition. The claimants have filed a claim petition in W.C.No.49 of 2011, claiming a compensation of Rs.10,00,000/- (Rupees Ten Lakhs only). The Tribunal has awarded a sum of Rs.4,92,124/- (Rupees Four Lakhs Ninety Two Thousand One Hundred and Twenty Four only) as compensation. Against which, the appellant has preferred this



3.A brief substance of the claim petition in W.C.No.49 of 2011 is as follows:

On 20.12.2010, at about 06.15 p.m., when the deceased Arumugam was working as a loadmen in the mini lorry bearing registration No.TN-55-7179 that belonged to the first respondent, the driver of the vehicle drove the vehicle in a rash and negligent manner along the right side of the road and dashed against the road divider and the mini lorry capsized. The deceased sustained head injury and he died on 26.12.2010 at the Madurai Government Rajaji hospital. The deceased was working as a loadman and was earning a monthly salary of Rs.6,000/- with Rs.50/- daily batta. The age of the deceased at the time of accident is 43 years. The petitioner claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent is as follows:

At the time of accident, one Manavalan was driving the vehicle. The deceased was an employee of the first respondent. But he received only Rs.3,000/- (Rupees Three Thousand only) as monthly salary. The driver of the first respondent was having valid driving licence. The vehicle was insured with the second respondent. The second respondent is liable to pay compensation.

5.Brief substance of the counter filed by the second respondent is as follows:

The deceased was not a loadman employed by the first respondent. The accident was not during the course of employment. There is no relationship of employer and employee between the deceased and the first respondent. From the FIR, it is clear that the deceased was returning in the mini lorry along with other coolies, after completing concrete work. The claimants were not the dependants of the deceased. The age, income and profession of the deceased are all denied. The claim is excessive.

6.On the side of the petitioners therein, one witness was examined and 7 documents were marked. On the side of the first respondent therein, one witness was examined and two documents were marked. On the side of the second respondent therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.4,92,124/- (Rupees Four Lakhs Ninety Two Thousand One Hundred and Twenty Four only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.The points for consideration raised by the appellant reads as follows:

"(i)Whether the learned Commissioner was erred in holding that the appellant was liable to pay the compensation to the claimants?"



(ii)Whether the learned Commissioner has failed to consider the case of the appellant?

(iii)Whether the learned Commissioner was right in holding that the deceased Arumugam was employed as the loadman in the mini lorry?

(iv)Whether the learned Commissioner is correct in deciding that there was employer - employee relationship exists between the deceased Arumugam and the mini lorry owner.

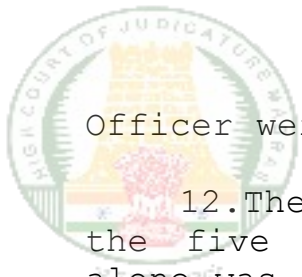
(v)Whether the learned Commissioner failed to note that the mini lorry owner has committed breach of policy conditions?"

8.On the side of the appellant, it is stated that the Deputy Commissioner has totally ignored to read the contents of the FIR, while deciding the employer employee relationship between the mini lorry owner and the deceased. The claimants and the mini lorry owner colluded together and created a false case. The deceased travelled in the mini lorry as a gracious passenger and he was not an employee. The appellant ought to have been exonerated from the liability to pay compensation. The award is excessive.

9.On the side of the appellant, it is further stated that the FIR was given by a co-worker, wherein it is clearly stated that after the completion of the construction work, the deceased and other coolie workers travelled in the mini lorry. The deceased was not a driver or a cleaner or a loadman in the van. No premium was paid for passengers in the goods vehicle. The owner of the vehicle and the deceased belong to the same village and to help the villager, the owner has deposed that the deceased was her employee.

10.On the side of the appellant, it is stated that FIR was filed on the side of the appellant and that by marking the FIR, the claimants admitted the document and its contents and that the deceased travelled as an unauthorized passengers and that the admitted fact need not be proved.

11.During the pendency of the proceedings, the respondents 3, 4 and 6 were subsequently impleaded as the legal heirs of the deceased third claimant. On the side of the respondents 1 and 2, it is stated that FIR was not sufficient to decide the liability. There was no evidence on the side of the second respondent/appellant herein to deny the employee and employer relationship. Even in the counter filed by the first respondent/the owner of the vehicle, the employer and employee relationship was admitted. Only an employer can give evidence as to the employment. The driver of the vehicle and the investigation



Officer were not examined on the side of the respondents.

12.The appellants raised five questions in the appeal. In all the five questions, the relationship of employer and employee alone was disputed by the appellant. When the owner of the vehicle has admitted that the deceased was his employee and when there is no rebuttal evidence on the side of the second respondent, the decision of the trial Court regarding the master and servant relationship is sustainable. There is no substantial question of law to be decided in the appeal.

13.In the result, this Civil Miscellenaous Appeal is dismissed. The respondents 1 to 6 are entitled to a sum of Rs.4,92,124/- (Rupees Four Lakhs Ninety Two Thousand One Hundred and Twenty Four only) as compensation with interest at the rate of 12% from the 30th date of the award till the date of realization.

14.The appellant is directed to deposit Rs.4,92,124/- (Rupees Four Lakhs Ninety Two Thousand One Hundred and Twenty Four only) with 12% interest from the 30th date of the award till the date of realization with cost and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. Excess amount, if any deposited shall be refunded to the respondents. The claimants are not entitled for interest for the defaultperiod, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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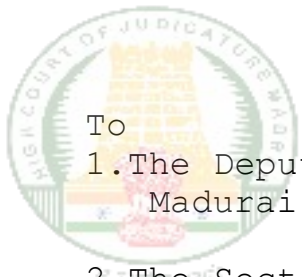
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Sub Assistant Registrar(CS)

MRN

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.

<https://hcservices.courts.gov.in/hcservices>



To

1.The Deputy Commissioner of Workmen Compensation,
Madurai.

2.The Section Officer,

V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SARANGAN, Advocate (SR-31465[F] dated 07/10/2021)

C.M.A. (MD) No.416 of 2016

07.10.2021

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