

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2022

Pronounced on : 13.04.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.3013 of 2018

and

C.M.P.Nos.623 of 2021 and 22861 of 2018

Bajaj Allianz General Insurance
Company Ltd., Bagavathy Palace II floor,
Block No.3, 3rd Avenue, Anna Nagar East,
Chennai-600 102.

.. Appellant/2nd Respondent

Vs.

1. K.Usha Rani

2. K.Krishnamoorthy

.. Respondents 1 & 2/Claimants 1 & 2

3. K.Sumathi

.. Respondent 3/1st Respondent

4. V.Kalidass

.. 4th Respondent/3rd Respondent

5. United India Insurance Co.Ltd.,
Silling Building
No.134, Greaves Road,
Chennai-600 006.

.. 5th Respondent/4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923 to set aside the decree and judgment dated 28.05.2018 made in W.C.Case No.392 of 2010, on the file of Court of Commissioner for Employees Compensation-2 (Joint Commissioner of Labour-2), Chennai.

For Appellant : Mr.J.Michael Visuvasam

For R1 & R2 : Mr.K.A.Ravindran

For R3 & R4 : Notice sent & returned unserved

For R5 : Mr.C.Paranthaman

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and judgment dated 28.05.2018 made in W.C.Case No.392 of 2010, on the file of Court of Commissioner for Employees Compensation-2 (Joint Commissioner of Labour-2), Chennai.

2. The respondents 1 and 2 are the parents of one Suresh, who died in a Motor Vehicle Accident, which took place on 16.03.2007. They have filed the W.C.No.392 of 2010 before the Commissioner of Employees Compensation and Joint Commissioner of Labour-2, Chennai-6, under Section 10 (4) and Section 4 of Employees Compensation Act 1923, claiming compensation of Rs.6,00,000/- for the death of their son arising out of and in the course of his employment. The learned Commissioner for Employees Compensation of Labour-2, Chennai, on consideration of both oral and documentary evidence, has passed an award on 28.05.2018 granting a sum of Rs.4,10,200/- with interest against the owner of the van, which was insured with the appellant/Insurance Company herein.

3. According to the respondents 1 and 2, their son Suresh was working as a loadman for the van bearing Registration No.TN 09 AJ 9956 owned by the 1st respondent/3rd respondent heren and insured the vehicle with the appellant/Insurance Company. It is also stated that the deceased was earning a sum of Rs.250/- as daily wages. Therefore, for the death of the deceased, the claim petition was filed against the owner and insurer of the Van.

4. The 1st respondent/3rd respondent herein is the owner of the vehicle. She resisted the claim petition by filing counter affidavit. It is stated that the deceased was paid a sum of Rs.150/- as daily wages and not Rs.250/- as claimed by the claimants. It is also claimed that she took insurance policy with the appellant/Insurance Company to cover untowards incident and hence, the appellant/Insurance Company is liable to pay the compensation.

5. The appellant/Insurance Company resisted the claim petition by way of filing counter affidavit, denying the existence of insurance policy in respect of the offending vehicle involved in the accident and also denied the relationship of the claimants with the deceased, his avocation as loadman with the 1st respondent/3rd respondent herein. The Insurance Company therefore prayed for dismissal of the claim petition.

6. On the same lines, the respondents 3 and 4 in the

claim petition also denied the claim of the claimants by filing counter affidavit.

7. Before the Commissioner for Employees Compensation, in order to prove their claim, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P13, while, on behalf of the respondents side, R.Ws.1 to 3 were examined and Exs.R1 to R4 were marked.

8. On consideration of entire materials, both oral and documentary evidence, by award dated 28.05.2018, the learned Commissioner of Employees Compensation, has awarded a sum of Rs.4,10,200/- with interest @ 12% per annum from the accident till the date of deposit, payable by the appellant Insurance Company. Challenging the said award, the appellant/Insurance Company has come forward with the present appeal.

9. The learned counsel for the appellant/Insurance Company would contend that the Commissioner has wrongly held that the claim petition was maintainable and that the appellant/Insurance Company is liable to pay huge compensation of Rs.4,10,200/- without any basis. He would further contend that the Commissioner has failed to appreciate that there was no nexus to the accident and the death of the deceased and the vehicle bearing Registration No. TN 09 AJ 9956 insured with the appellant. He pointed out that the death of the deceased occurred only due to the rash and negligent driving of the deceased while riding the motorcycle owned by the 3rd respondent and insured with the 5th respondent/Insurance Company. He also would contend that there was no employer-employee relationship between the owner of the offending vehicle and the deceased and in the absence of any proof of such employment forthcoming from the owner of the offending vehicle, the learned Commissioner ought to have rejected the claim petition. He also pointed out that there was a contract of employment between the deceased and the owner of the motorcycle and therefore the Commissioner ought to have directed the owner of the motorcycle, the 3rd respondent in the claim petition, to pay the compensation. With these contentions, the learned counsel for the appellant would contend that the award granted by the learned Commissioner is liable to be set aside.

10. The learned counsel for the respondents would submit that the learned Commissioner in a proper perspective awarded the compensation which requires no interference.

11. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials placed on record.

12. The relationship between claimants and the deceased Suresh, being the son of the claimants, is not in dispute. The deceased Suresh, according to the 1st respondent/owner of the van, was employed in the van owned by her. The 3rd respondent in the claim petition is the husband of the 1st respondent/owner as well as the person who said to have employed the deceased Suresh for loading purpose in the van. It is also not in dispute that the van was insured with the appellant/Insurance Company and the policy of insurance was very much in force as on the date of accident.

13. The main grievance projected by the appellant/Insurance Company is that at the time of accident, the deceased was not travelling in the van insured with them, rather, he was riding a Hero Honda Splendor Motorcycle bearing Registration No.TN-09-AQ-7380 which was owned by the 3rd respondent in the claim petition and insured with the fifth respondent. Therefore, it cannot be said that the appellant can be fastened with the liability for the death of the deceased Suresh when the deceased was not travelling in the van at the time of accident. Therefore, it is contended that no liability could be fastened as against the appellant/Insurance Company. The appellant/Insurance Company also disputes the relationship of employer-employee between the deceased and the respondents 1 and 3 in the claim petition.

14. On appreciation of the above contentions advanced on behalf of the appellant/Insurance Company, it is seen that the 3rd respondent is the husband of the owner of the van namely the first respondent. The third respondent has categorically deposed before the Commissioner for Workmen Compensation that on the fateful day, the van was loaded with iron pipes to be used for tying the political flags to commemorate the visit of the Honourable Chief Minister. He also deposed that for the purpose of tying flags in the iron poles, he had secured a contract with a contractor. It is also stated that when the vehicle reached a place called Salavakkam Kout Road, Palliagaram, near Kokkarako Company, the 3rd respondent directed the deceased Suresh to drive his vehicle and to follow the van. As instructed by the 3rd respondent, the deceased drove the two wheeler Hero Honda Splendor and at that time, he met with an accident and died. The insurer of the Hero Honda Splendor was arrayed as fourth respondent in the claim petition and fifth respondent herein.

15. With this back drop, it has to be seen as to whether there is any employer-employee relationship between the respondents 1 and 3 in the claim petition and the deceased or as to whether the deceased died during the course of his employment. In the counter affidavit filed by the 3rd respondent before the Commissioner, it was stated that the deceased was

paid a sum of Rs.150/- per day as wages and not Rs.250/- per day as claimed by the parents of the deceased.

16. Before the Commissioner, the 3rd respondent was examined and he has stated about the purpose for which the deceased was engaged. This is also fortified by Ex.P9, a reply letter sent by the 1st respondent/owner of the van in response to a notice sent on behalf of the claimants on 23.10.2009. The copy of the notice was also addressed to the appellant/Insurance Company. However, the appellant has not given any reply thereof. Even in the first information report, it was clearly stated that the deceased was working under the 3rd respondent in the claim petition, who is the husband of the 1st respondent/owner of the van. Further, from the evidence of R.W.2-Sudhakar, it could be seen that the deceased was employed as a load man in the van insured with the appellant. Therefore, it is evident that the deceased died during the course of his employment with the 3rd respondent, as a load man in the van and invocation of the provisions of the The Employees Compensation Act, 1923 before the learned Commissioner for Employees Compensation is proper.

17. It is pertinent to mention that at the time of accident, the claimant was not available in the van. The claimants did not invoke the provisions of Motor Vehicles Act, to seek compensation rather they have filed claim petition under Section 10 (1) and 4A of the Employees Compensation Act before the Commissioner of Employees Compensation and Joint Commissioner of Labour, Chennai. Given the facts and circumstances of the case, the claim petition is maintainable before the Commissioner.

18. The Commissioner is right in holding that the deceased met with an accident during the course of his employment with the 1st and 3rd respondents in the claim petition. However, the Commissioner lost sight of the fact that at the time of the accident, the deceased was not in the van, either as a loadman or as an occupant or in any other position. Therefore, the policy of insurance with the appellant has no nexus to the death of the deceased. The policy of insurance with the appellant requires that the deceased ought to have travelled in the van at the material point of time. In this case, admittedly, the deceased did not travel in the van at the time of his death or he suffered any injury leading to his death while travelling in the van, which is covered with the appellant Insurance Company. While so, the Commissioner ought to have directed the employers namely the first and third respondents in this appeal to pay the compensation and to recover it from the fifth respondent-Insurance Company inasmuch as the death of the deceased resulted while he was riding the two wheeler belonged to the respondents 1 and 3 and insured with the first respondent in this appeal.

19. The Commissioner for Employees Compensation placed reliance on the decision of this Court in New India Assurance Co.Ltd. Vs. A.SharifaBivi and Others reported in 2002 ACJ 378, and DayaKishan Joshi and Others Vs. Dynemech Systems Pvt.Ltd reported in 2017-2 TNMAC 641 (SC). In that case, the deceased was directed by his employer to purchase break oil for the vehicle in which the deceased was a driver and at that time, the deceased in that case driven a two wheeler and met with an accident. In those circumstances, it was held that the accident occurred during the course of employment of the deceased. Applying the principles laid down in that decision, it is true that the deceased, in the course of his employment suffered injuries and died. However, such death has no nexus to his status as a loadman in the Van, which was insured with the appellant Insurance Company. While so, fastening liability on the appellant - Insurance Company is uncalled for. On the other hand, the deceased had driven the two wheeler of his employer and unfortunately met with an accident and died. In such circumstances, the award passed by the Commissioner for Employees Compensation is liable to be set aside and the appellant Insurance Company has to be exonerated from the liability to pay the compensation. On the other hand, the compensation awarded to the claimants have to be paid by the employers namely the respondents 1 and 3 in this appeal and to recover it from the fifth respondent-Insurance Company with which the two wheeler driven by the deceased was insured.

20. As regards quantum, the Commissioner taken note of the fact that the deceased was 32 years at the time of his death. Even going by the statement of the respondents 1 and 3 that they have paid a sum of Rs.150/- per day as wages, the Commissioner has taken a sum of Rs.150/- per day as income of the deceased and Rs.4,500/- as the monthly income. By applying factor 203.85, the Commissioner arrived at a sum of Rs.4,10,200/- as compensation which includes a sum of Rs.2,500/- towards funeral expenses. This amount awarded by the Tribunal, in the opinion of this Court, is proportionate to the wages earned by the deceased. While so this Court finds no reason to interfere with the quantum of compensation awarded by the Commissioner.

21. In the result, decree and judgment dated 28.05.2018 made in W.C.Case No.392 of 2010, on the file of Court of Commissioner for Employees Compensation-2 (Joint Commissioner of Labour-2), Chennai is set aside in so far as it relates to the fastening of liability on the appellant-Insurance Company. The Civil Miscellaneous Appeal is allowed to the extent indicated above. The respondents 1 and 3 in this appeal are directed to deposit the entire compensation amount awarded by the Commissioner for Employees Compensation-2 (Joint Commissioner of

Labour-2), Chennai, within a period of six weeks from the date of receipt of a copy of this judgment and recover it from the fifth respondent- Insurance Company in a manner known to law. On such deposit, the claimants are entitled to withdraw the entire compensation amount with accrued interest. The appellant-Insurance Company is permitted to withdraw whatever amount deposited by them before the Commissioner by reason of this Judgment. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Court of Commissioner for Employees Compensation-2
(Joint Commissioner of Labour-2),
Chennai - 6.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.25411

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.25997

+2ccs to Mr.C.Paranthaman, Advocate, S.R.No.25378

C.M.A.No.3013 of 2018

AJB(CO)
SU(13/05/2022)