



CMA(MD)No.1421 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A(MD) No.1421 of 2008

The Branch Manager,
The New India Assurance Co. Ltd.,
147, Salai Road,
Ramnadu District.

... Appellant/Respondent No.2

-Vs-

1.Ramu
2.Minor Kanimalar
3.Minor Mangaleswari
4.R.Manikavasagam

...Respondents 1 to 3/Petitioners

...Respondent No.4/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act against the order dated 26.06.2008 made in W.C.No.109 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.R.Vijay Karthikeyan

For R1 to R3 : Mr.R.Aravindan

For R4 : Mr.P.T.S.Narendravasan



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JUDGMENT

Being aggrieved by the order dated 26.06.2008 made in W.C.No.109 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, this Civil Miscellaneous Appeal is preferred by the Insurance Company.

2. The Claim Petition was filed by the wife of the deceased, who sustained fatal injury while travelling in Tractor bearing Reg.No.TN-65-D-0657 owned by the first respondent therein, namely Manikavasagam. On 03.10.2004, in the course of his employment, the deceased was travelling in Tractor attached to the Tractor near Trukkal bus stop within T.U. Mangai police limit and due to rash and negligent driving of the driver of the Tractor, who applied sudden break to avoid a culvert, the deceased, who was travelling in the Tractor, was thrown out and sustained head injury leading to his death.

3. According to the claimants, the deceased was employed under the first respondent as load man and in the course of his employment, the accident



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occurred. The said contention has been disputed by the Insurance Company relying upon the First Information Report, wherein it is stated that the deceased while travelling in the mudguard of the Tractor was thrown out from the Tractor and he was not employed under the first respondent since there is no employer and employee relationship between the owner of the vehicle and the deceased and therefore, the petition under the Workmen Compensation Act is not maintainable.

4. The Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, after examining the deposition relied on by the claimants and the Insurance Company, has arrived at a conclusion that though the owner of the vehicle has given a letter by stating that there is no relationship between the owner of the vehicle and the deceased, the said letter is not proved in the manner known to law. Contrarily, the co-passenger-P.W.2 being an eye witness, who accompanied in the travel, has explained how the accident has occurred in the course of employment. The Tribunal has relied upon his evidence and held that there was employer and employee relationship. Therefore, the Claim Petition under the Workmen Compensation Act is maintainable. The Tribunal, having considered the other evidence and the earning capacity of the deceased, has



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awarded a compensation of Rs.3,64,489/- (Rupees Three Lakhs, Sixty Four Thousand, Four Hundred and Eight Nine only) with interest at the rate of 12% per annum.

5. Being aggrieved by the liability and quantum of compensation, the present Civil Miscellaneous Appeal has been filed on the ground that the Tribunal has erred in holding that there was employer and employee relationship, which is contrary to the documentary evidence particularly Ext.R.4, the letter of the owner who is arrayed as the first respondent in the Claim Petition. The further contention of the Insurance Company is that the Tractor, which was insured, has only one seating capacity for travel and it cannot accommodate any other passenger. While so, the deceased, who was travelling as an unauthorized passenger, cannot be compensated by the Insurance Company. It is the owner of the vehicle, who is liable to pay the compensation.

6. Contrarily, the learned counsel for the claimants/respondents 1 to 3 would submit that the appeal itself is not maintainable because it is not accompanied by the Certificate mandated for preferring the appeal indicating the



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deposit of Rs.25,000/-. Further even assuming the appeal is maintainable, it is devoid of merits and liable to be dismissed since the claimant has proved beyond doubt that the deceased was employed under the first respondent and the accident took place during the course of employment.

7. This Court gave its anxious consideration to the submission made on either side and carefully perused the materials available on record.

8. There is no doubt that the deceased Lakshmanan had sustained injuries due to the fall from the Tractor on the fateful date. The Tractor bearing Reg.No.TN-65-D-0657 belongs to the first respondent and it was insured under the appellant herein. The insurance policy does not indicate whether the Insurance to the Tractor includes the Tractor. In this regard, the deposition of R.W.2 gains significance. D.W.1, Narayanan, is the Administrative Officer of the appellant Insurance Company, he admitted that the Tractor was insured under them and they appointed an Investigating Officer and found that the said Lakshmanan was not employed under the owner of the Tractor. In fact, the letter alleged to have been given by the owner of the vehicle has been marked as Ext.R.4. However, neither



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the Investigating Officer nor the author of the letter were confronted with the letter. D.W.2 has categorically deposed that the Insurance coverage includes the Tractor. P.W.2, who is an eye witness/co-passenger, admitted that he travelled along with the deceased and saw the accident.

9. Considering all the abovesaid aspects, this Court holds that the contention of the appellant to disown the liability on the ground that the deceased Lakshmanan was not employed with the owner of the vehicle is unfounded and contrary evidence available. Finding no merits in this appeal, the same is dismissed. Accordingly, the order dated 26.06.2008 made in W.C.No.109 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, is confirmed. No costs.

Index : Yes / No
Internet : Yes / No
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To,

1. The Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.
2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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DR.G.JAYACHANDRAN,J.

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