



C.M.A.(MD)No.1020 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.10.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1020 of 2013

1.Raman @ Ramasamy

2.Mallika @ Vimalavathi

.. Appellants / Petitioners

Vs.

1.Ravichandran

2.The Branch Manager,
National Insurance Co. Ltd.,
12A, Surveyte Convent Building,
Opp. To District Court,
Dindigul.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the order, dated 31.05.2010, made in W.C.No.119 of 2006, on the file of the Deputy Commissioner of Labour, Dindigul.

For Appellant

: Mr.C.Vakeeswaran

For Respondents

: Mr.J.S.Murali for R2

: Mr.D.Balamurugapandi for R1



WEB COPY



C.M.A.(MD)No.1020 of 2013

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 31.05.2010, made in W.C.No.119 of 2006, on the file of the Deputy Commissioner of Labour, Dindigul. The appellants herein are the claimants and the respondents herein are the respondents before the Workmen's Compensation Tribunal.

2. Brief substance of the petition filed by the petitioner, in W.C.No.119 of 2006, is as follows:

The deceased- Balamurugan was working as a driver in a Jeep bearing Registration No.TAA-5647 that belonged to the first respondent and he was receiving Rs.6,000/- as monthly salary. On 04.11.2004, when the deceased was driving the vehicle, the vehicle capsized and the deceased was given first aid in a private hospital, then, he was admitted in Madurai Rajaji Hospital, and he died on 09.11.2004. The age of the deceased was 23 years. The petitioners are his dependents and they claimed a sum of Rs.5,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in W.C.No.119 of 2006, is as follows:-



C.M.A.(MD)No.1020 of 2013

The age, profession and income of the deceased are to be proved. The petitioner has to prove that the vehicle concerned was insured with the second respondent and that the driver was having a valid driving licence. The deceased was not working as a driver under the first respondent, he travelled only as a gratuitous passenger. The second respondent is not liable to pay compensation.

4. A brief substance of the additional counter filed by the second respondent, in W.C.No.119 of 2006, is as follows:-

The deceased travelled in the vehicle only as a Mechanic. When the deceased was fixing the Engine, the Engine fell on his chest and due to that injuries he succumbed to the death, in the report of the private hospital, it was mentioned that it was an industrial accident. After suppressing the manner of accident, the claim petition was filed. There was no relationship of employer and employee between the deceased and the first respondent and hence, the second respondent is not liable to pay compensation.

5. 1 witness was examined and 7 documents were marked on the side of the petitioner. 1 witness was examined and 6 documents were marked on the side of the respondents. After considering both sides, the Labour Commissioner awarded a sum of **Rs.4,47,920/-** as compensation to be paid by the first respondent.



C.M.A.(MD)No.1020 of 2013

6. Against the award, the claimants / appellants have filed an appeal before this Court on the following grounds:-

The Commissioner of Labour failed to consider Ex.P1-copy of the F.I.R. The Labour Commissioner has relied upon Ex.R2 to R4, without any proper proof. The Labour Commissioner failed to consider the contents of the F.I.R. The Labour Commissioner wrongly relied on the document Ex.R5 and R6. The Labour Commissioner ought to have fixed the liability on the second respondent. The second respondent himself has admitted that the accident has happened during the course of employment. The engine was attached to the vehicle and hence, the policy cover the liability.

7. On the above grounds, this Court, by its order dated 14.10.2012, has admitted this appeal on the following substantial question of law:-

(I) Whether the Court below is justified in fixing the liability as against the first respondent and exonerated the second respondent from its liability, when the policy is in force, warrants interference?

Issue No.I :

8. On the side of the appellants, it is stated that the Labour Commissioner was wrong in exonerating the second respondent from the liability and the fixing



C.M.A.(MD)No.1020 of 2013

liability only against the first respondent. The vehicle was insured with the second respondent and hence, the insurance company is liable to pay compensation to the appellant.

9. A judgment of the Hon'ble Supreme Court reported in **2017-STPL-12368- SC (Daya Kishan Joshi and another V. Dynemech Systems Pvt. Ltd.)**, wherein, it is stated as follows:-

“It is clear that the presence of the deceased on the road in question was incidental to his employment as a sales engineer. As he had to go to the Hero Honda Factory to conduct a filter test, he was merely doing what was required of him as an employee. Thus, his accidental death on the way back after completing his work falls squarely within Section 3(1) of the Employees Compensation Act. It needs to be concluded that the accident arose out of employment inasmuch as the very nature of the employment of the deceased made it necessary for him to be there. The matter is returned to the Commissioner under the Act for deciding the remaining issues framed by him.”

10. On the side of the respondents, it is stated that the relationship of employer and employee was not at all proved by the claimants. The accident did not take place in the course of employment. The manner of accident was wrongly stated



C.M.A.(MD)No.1020 of 2013

in the claim petition. The accident has happened when the deceased was fixing the engine and the engine fell on the deceased and he sustained injuries.

10. On the side of the appellants, it is stated that on 04.11.2004 itself an intimation was sent to the police, regarding industrial accident. Only subsequent to the date of death, that is, on 09.11.2011, the claimants and the police conspired together and registered the F.I.R, dated 04.11.2004. The case of the claimants is that when the deceased was working as a driver under the first respondent. The case of the second respondent is that the deceased was fitting the engine, the engine fell on him and he sustained injuries. The intimation sent from Madurai Jawahar Hospital, regarding the Medico legal case, was marked as Ex.R2. Accident Register was marked as Ex.R3. Intimation sent to the police from the hospital was marked as Ex.R4. From Ex.R2 to R4 , the Labour Commissioner has decided that the deceased was not working as driver.

11. The first respondent remained exparte. Driving licence was marked as Ex.P2. From Ex.P2 it is clear that the deceased was a qualified driver. No document was filed on the side of the respondents that that deceased was a Mechanic. Since the vehicle capsized, there was possibility for the driver to have tried to set right the vehicle. The endorsement in Ex.R2 to R4 are not sufficient enough to decide that the



C.M.A.(MD)No.1020 of 2013

deceased was not a driver under the first respondent, at the time of accident. From the evidence of P.W.1 and from Ex.P1, it is clear that the vehicle was used for transporting wooden logs. Hence, it is decided that the accident has taken place during the course of employment. There is no dispute regarding the validity of the insurance policy. Hence, it is decided that the Labour Commissioner is not correct in exonerating the second respondent.

12. The Labour Commissioner has fixed the age of the deceased at 21 years on the basis of the driving licence. The Labour Commissioner fixed the monthly income as Rs.4,000/-, which is reasonable. After deducting 50% towards own expenses and after applying factor, 222.71, the Labour Commissioner fixed the loss of income as Rs.4,45,420/-, which is reasonable. Including Rs.2,500/- towards funeral expenses, the Labour Commissioner fixed the compensation as **Rs.4,47,920/-**, which is reasonable.

13. For the reasons stated above, it is decided that the order of the Labour Commissioner is to be modified as follows:

- (i) the respondents 1 and 2 are liable to pay compensation;
- (ii) the second respondent as the insurer of the vehicle is directed to pay compensation on behalf of the first respondent.



C.M.A.(MD)No.1020 of 2013

WEB COPY 14. This appeal is allowed accordingly. No costs.

15. The second respondent herein / Company is directed to deposit the entire compensation of **Rs.4,47,920/-** along with interest at the rate of **12% p.a** **from the 31st day of accident till the date of deposit** to the credit of W.C.No.119 of 2006, on the file of the Deputy Commissioner of Labour, Dindigul, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants herein / claimants are permitted to withdraw their share amount as apportioned by the Labour Commissioner. The Claimants are not entitled for interest for the default period, if there is any default.

02.12.2022

Index : Yes/No

Internet : Yes/No

Ls

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.



C.M.A.(MD)No.1020 of 2013

WEB COPY

1.The Deputy Commissioner of Labour,
Dindigul.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1020 of 2013

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.1020 of 2013

02.12.2022