



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A (MD) NO. 526 OF 2008

The United India Insurance Company Limited,
Chennai. :Appellant/ II Respondent

.vs.

1.Lakshmi

2.Minor Santhiya

Minor represented through her mother and guardian,
the first respondent herein :Respondents/Applicants

3.G.Ajmal Khan :Respondent /Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 130 of the Workmen's Compensation Act, 1923 made in W.C.No.25 of 2004, dated 28.08.2007, on the file of Commissioner for Workmen Compensation (Deputy Commissioner for Labour) at Tirunelveli.

For Appellant :M/s.N.Murugesan

For Respondents :No appearance
1 and 2

For Respondent-3 :Mr.R.J.Karthick
for M/s.R.Subramanian

JUDGMENT

Challenge in the Civil Miscellaneous Appeal is to the award of the Commissioner for Workmen Compensation (The Deputy Commissioner for Labour), Tirunelveli in W.C.No.25 of 2004, dated 28.08.2007.

2.The claimants who are the wife and minor daughter of one Kumar, who died in a motor accident occurred on 6.10.2003, sought for a compensation of Rs.10 lakhs for the death of the said Kumar. It is claimed that the said Kumar employed with the first respondent was on his way back after collection, on the direction of the first respondent from Parangimalai to Madipakkam, riding the motor-cycle bearing Registration No. TN 22 V 9282 belonging to his employer. The vehicle met with an accident near the oil mill resulting in severe injuries to Kumar. He died, despite treatment, at about 11.30 p.m., on 5.11.2003.



3.The claim was resisted by the appellant/Insurance Company contending that the accident did not occur in the course of employment. It was further claimed that the quantum as claimed is excessive.

4.The Commissioner for Workmen Compensation, upon consideration of the evidence before him, concluded that the deceased was in employment with the first respondent and that the accident had occurred during the course of employment. In coming to the said conclusion, the Commissioner relied upon the fact that the first respondent had remained ex-parte and the Insurance Company has not established that the deceased was not employed with the first respondent. On the said finding, the learned Commissioner awarded compensation to the tune of Rs.1,90,611/-.The claimants had accepted the said award.

5.The Insurance Company is on appeal. The main contention of Mr.N.Murugesan, learned counsel for the appellant is that the deceased was not employed with the first respondent and as such, the Commissioner should not have made the Insurance Company liable for the award. The Commissioner has rejected the contention of the learned counsel for the appellant on the question of employment on the ground that the the Insurance Company has not let in any sufficient evidence to prove the same. The best way to prove the non-employment is by examining the first respondent. Nothing prevented the appellant/Insurance Company from examining the first respondent, even though he had remained exparte before the Tribunal. Therefore, I am unable to find fault with the Commissioner for Workmen Compensation for having reached the conclusion that the Insurance Company has not established its contention that the deceased was not employed with the first respondent and the accident did not occur during and in the course of employment.

6.Be that as it may, Mr.R.J.Karthick, learned counsel for the third respondent would submit that the deceased was employed with the third respondent.

7.Hence, I do not find any reason to interfere with the award of the Tribunal. Thus, the Civil Miscellaneous Appeal fails and the same stands dismissed. No costs.

Sd/-

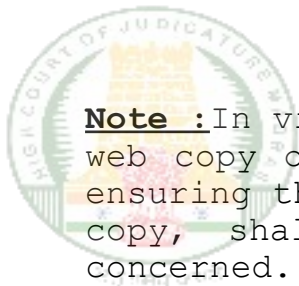
Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

vsn



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WEB COPY

To

1. The Commissioner for Workmen Compensation,
(Deputy Commissioner for Labour),
Tirunelveli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.N.MURUGESAN, Advocate (SR-6698[F] dated 17/02/2022)

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RD(02.03.2022) 3P 5C