



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.746 of 2021 &

CMP(MD)No.6794 of 2021

WEB COPY

V.Ramanathan

... Appellant

vs.

1.R.Kalaiyarasi

2.R.Gopinath

3.R.Kamalakaran

4.R.Sumathy

5.The New India Assurance Company Limited,
No.923, East Coast Chambers,
1st Floor, G.N.Shetty Road,
T.Nagar, Chennai

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act to set aside the order in EC.No.203 of 2010 dated 05.02.2020 on the file of the Joint Commissioner of Labour / Commissioner of Workmen Compensation, Trichy.

For Appellant :Mr.L.Siva for Mr.R.Vijayakumar

For Respondents :Mr.Paul Murugesan

for Mr.B.Jameel Arasu for R1 to R4

Mr.C.Deepak for R5

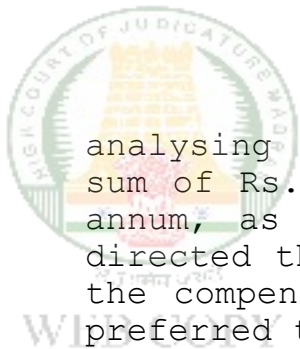
J U D G M E N T

The appellant / employer has filed this appeal against the order in EC.No.203 of 2010 dated 05.02.2020 on the file of the Joint Commissioner of Labour / Commissioner of Workmen Compensation, Trichy.

2. The brief case of the claimants is as follows.

The deceased Rethinasamy was working as a driver in a vehicle bearing Registration No.TN KA 01 AB 9977, which belongs to the appellant herein. While driving the vehicle on 18.11.2005 from Trichy to Bangalore, at about 07.00 am, near Bangalore Lalbagh, the deceased suffered from sudden chest pain and was taken to the hospital and died in the Hospital.

3. The 1st respondent is the wife of the deceased and the respondents 2 to 4 are the children of the deceased. They filed EC.No.203 of 2010, claiming compensation for the demise of Rethinasamy. The learned Joint Commissioner of Labour after



analysing the oral and documentary evidences on record, awarded a sum of Rs.1,43,455/- together with interest at the rate of 12% per annum, as compensation to the respondents 1 to 4 / claimants and directed the appellant herein / the employer of the deceased to pay the compensation. Aggrieved over the said order, the appellant has preferred this appeal.

4. On 01.09.2021, this Court admitted this appeal on the following substantial questions of law.

"1) Whether the authority was right in fixing the liability upon the appellant when the vehicle has a valid insurance on the date of accident and the Insurance Company is also a party to the proceedings?

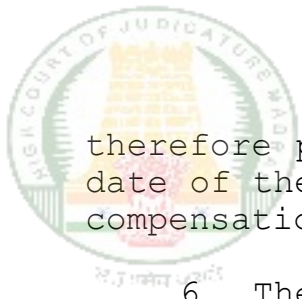
2) Whether the authority was right in rejecting the application to set aside the ex-parte award in view of the express provision in Rule 41 of Workmen Compensation Rules, 1924?

3) Whether the authority was right in condoning the delay and restoring the claim petition without notice to the appellant?

4) Whether the authority was right in proceeding with the enquiry without intimating the restoration of the claim petition to the appellant?

5) Whether the authority was right in directing the appellant to pay the compensation when the prayer in the claim petition is directed against the Insurance Company?"

5. The learned counsel for the appellant would submit that on the date of the accident there is valid Insurance Policy for the vehicle bearing Registration No.TN KA 01 AB 9977. The Insurance Company has also filed a counter admitting the existence of the Insurance Policy. While so, the learned Joint Commissioner of Labour erred in directing the appellant to pay compensation to the claimants. The Insurance Company ought to be held liable to pay compensation to the claimants. Further, the claim petition was dismissed for default on 20.08.2013 and the learned Joint Commissioner of Labour without even issuing notice, has condoned the delay of 1644 days in filing the restoration petition and has allowed the restoration petition filed by the claimants. Since no notice was issued to the appellant while allowing the restoration petition, the appellant was unable to produce the Insurance Policy Copy before the learned Joint Commissioner of Labour and an exparte award came to be passed on 05.02.2020. The learned counsel



therefore prayed that, since there is valid Insurance Policy on the date of the accident, the appellant should be exonerated from paying compensation to the claimants.

6. The learned counsel for the fifth respondent / Insurance Company would submit that there is no RC book and permit for the vehicle bearing Registration No.TN KA 01 AB 9977. Further, the deceased / driver of the vehicle was not in possession of valid driving licence on the date of the accident. The learned Joint Commissioner of Labour after properly analysing the materials on record, fixed the liability on the appellant herein and the same need not be disturbed.

7. The employer - employee relationship between the appellant and the deceased is admitted by the parties. The deceased died during the course of the employment. In the counter filed before the learned Joint Commissioner of Labour, the Insurance Company has admitted that there is valid Insurance Policy for the vehicle on the date of the accident. It is pertinent to point out that Insurance Policy would be issued by the Insurance Company only after verifying the RC book and permit of the vehicle. While there is a valid Insurance Policy, the Insurance Company cannot raise objections regarding the RC book and permit. The Insurance Company had also taken a stand that the deceased / driver of the vehicle was not in possession of valid driving licence on the date of the accident. However, a perusal of the records shows that the deceased / driver of the vehicle had valid driving licence on the date of the accident and the same was marked as Ex.P3. Therefore, since the employer - employee relationship between the appellant - deceased / driver of the vehicle is admitted, the death occurred during the course of employment and there is valid Insurance Policy for the vehicle, the Insurance Company is liable to compensate the respondents 1 to 4 / claimants. Accordingly, the substantial questions of law are answered in favour of the appellant.

8. It is made clear that the respondents 1 to 4 / claimants are not entitled to interest for the default period of 1644 days.

9. At this juncture, the learned counsel appearing for the appellant would contend that the appellant has deposited the entire compensation amount together with interest and costs before the learned Joint Commissioner of Labour, Tiruchirappalli. Since the appellant is hereby exonerated from his liability, he is at liberty to withdraw the amount deposited by him together with interests and costs after following due process of law.

10. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is confirmed.



(iii) The fifth respondent / Insurance Company is directed to deposit the compensation awarded by the Tribunal ie., Rs.1,43,455/- together with interest at the rate of 12% per annum from the date of claim petition till the date of deposit (exempting interest for the default period of 1644 days) to the credit of EC.No.203 of 2010 on the file of the Joint Commissioner of Labour / Commissioner of Workmen Compensation, Trichy within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents 1 to 4 / claimants are at liberty to withdraw the same in the following apportionment after following due process of law. The 2nd, 3rd and 4th respondents are entitled to a sum of Rs.25,000/- each along with proportionate interest and costs. The 1st respondent is entitled to a sum of Rs.68,455/- along with proportionate interest and costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1 The Joint Commissioner of Labour/
Commissioner of Workmen Compensation,
Trichy

2.The New India Assurance Company Limited,
No.923, East Coast Chambers,
1st Floor, G.N.Shetty Road,
T.Nagar, Chennai

+1 CC to M/s.G.MOHAN KUMAR, Advocate (SR-2476[F] dated 25/01/2022)

CMA(MD)No.746 of 2021
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SS/02.03.2022 : 4P/4C