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C.M.A.(MD)No.820 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.02.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A. (MD)No.820 of 2021

and

C.M.P. (MD)No.7566 of 2021

The Branch Manager,
National Insurance Co. Ltd.,
No.58, Rajaji Street,
Kangeyam,
Erode District.

...Appellant/Respondent No.2

Vs.

1.Azhagammal

2.Athiappan

3.Rajagopal

...Respondents/Petitioners

...Respondents/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal - filed under Section 30 of the Workmen Compensation Act, to set aside the order passed by the Deputy Commissioner of Labour, Dindigul, made in W.C.No.3 of 2014 dated 27.02.2021 and allow this appeal with costs.

For Petitioner : Mr.R.Rajamani

For R1 & R2 : Mr.S.M.Mohan Gandhi

For R3 : No appearance

JUDGMENT

By consent of both parties, this Civil Miscellaneous Appeal is taken up for final disposal.

2.The Insurance Company is the appellant herein. The Legal heirs of the deceased Balamurugan are the respondents 1 and 2, who are the claimants. The owner of the Tractor is the third respondent herein.

3.The respondents herein have filed W.C.No.3 of 2014 before the Employee Compensation Tribunal, Dindigul for the death of their son, aged about 16 years. According to the first claimant, who is the mother of the deceased, his son was studying 11th standard in Sithayankottai Government Higher Secondary School. During holidays, he used to work as Loadman to meet his livelihood and in order to pay education fees. In such a manner, on 24.08.2013, he travelled in the Tractor. On the turn in a curved path, he fell down from the

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Tractor, sustained injuries and succumbed thereafter. Hence, the claim petition has been filed.

4.The Employee Compensation Commissioner, taking into consideration the evidence of PW1 and Ex.P1 to P3, came to the conclusion that the deceased was the employee with the third respondent herein and adopted Minimum Wages Act, 1948 and fixed the monthly wages as Rs.7283/- and adopted age factor of 228.54, as per Schedule IV of the Employees Compensation Act, 1923 and awarded Rs.8,37,228/-.

5.The stand of the plea of the appellant Insurance Company is that there is a violation of terms of the policy. The same is taken note of, following the decision of this Court, in the case of *Oriental Insurance Company Limited, Kerala vs. Sivappan*, reported in 2015 (1) TNMAC 447, wherein pay and recovery was ordered.

6.After hearing the learned counsel for the appellant Insurance Company and the claimants, I find the evidence of PW1 is to the effect that only during holidays, the deceased used to work as Loadman and therefore, he could have worked for 13 to 14 days per month and the same is rounded upto 15 days and accordingly, the salary fixed at Rs.7283/- is reduced to Rs.3641.5/- (7283/2). The quantum fixed on all other heads remains unchanged. Therefore, the total Compensation is reduced to $50/100 * 7283/2 * 228.54 = 8,32,228/2 = Rs.4,16,114/-$. As far as liability is concerned, the order of pay and recovery passed by the Commissioner is in accordance with law and hence, this Civil Miscellaneous Appeal is partly allowed to the extent as indicated above, being 50% of the award amount as compensation in appeal, modifying the quantum of compensation alone.

7.The learned counsel for the appellant Insurance Company states that the entire amount has already been deposited.

8.The appellant is directed to pay remaining amount, if any, along with accrued interests and costs. The claimants are permitted to withdraw the award amount with accrued interest and costs and balance, if any, shall be withdrawn by the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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.

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To:

1.The Deputy Commissioner of Labour,
Dindigul.

2 The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai.

Judgment made in
C.M.A.(MD)No.820 of 2021

Dated:
09.02.2022

MK/17.02.2022/3P/4C