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CMA (MD)No.765 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.03.2022

Pronounced on : 19.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA (MD)No.765 of 2014

and

M.P. (MD)No.2 of 2014

The United India Insurance Company Ltd.,
No.1 Post Office Street,
Palayamkottai,
Tirunelveli.

... Appellant/Respondent No.2

Vs.

1.M.Pandarathi
2.Minor.Muthuselvi
3.Minor.Muthuselvam

... Respondents 1 to 3/Petitioners 1 to 3

(Minor respondents 2 and 3
represented by their guardian
and mother, the first respondent)

4.S.Ramachandran

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

5.M/s.Kumar Spinning(P) Ltd,
Krishnapuram,
Tirunelveli-11.

...Respondent No.5/Respondent No.3

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order passed in W.C.No.61 of 2009 dated 09.05.2013 on the file of the Deputy Commissioner for Workmen's Compensation, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran

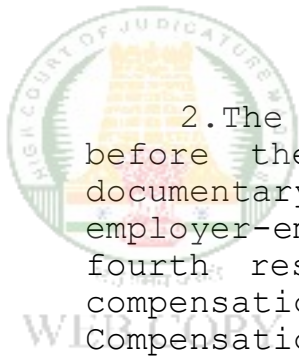
For R1 to R3 : Mr.M.Ashok Kumar

for P.Santhosh Kumar

For R4 and R5 : No appearance

J U D G M E N T

The insurance company is the appellant herein. The respondents 1, 2 and 3 herein filed a claim petition before the Deputy Commissioner for Workmen's compensation, Tirunelveli, claiming compensation under the Workmen's Compensation Act, for the death of her husband Murugan in a road transport accident, while he was in employment of the fourth respondent herein, who is the first respondent before the Commissioner.



2.The respondents 4 and 5 herein have filed a counter statement before the Commissioner and on considering both the oral and documentary evidence, the Commissioner has held that there is an employer-employee relationship between the deceased Murugan and the fourth respondent, S.Ramachandran and accordingly, computed the compensation as per the criteria fixed under the Workmen's Compensation Act.

3.Aggrieved against the said award, the insurance company was preferred the present appeal. The above Civil Miscellaneous Appeal is admitted on the following Substantial Questions of Law:

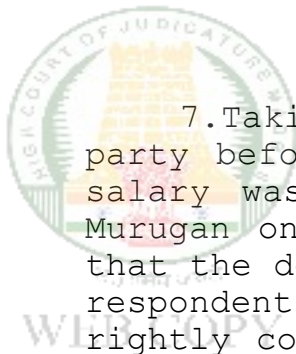
i)Whether the learned commissioner has failed to hold that the deceased Murugan was not employed in the 4th respondent's Mini Lorry at the time of accident?

ii)Whether the learned commissioner has failed to hold that there was no employer-employee relationship exist between the 4th respondent and the deceased Murugan at any point of time?

4.The learned counsel appearing for the insurance company would contend that since the deceased was a regular employee of the fifth respondent, M/s. Kumar Spinning mill, he cannot be treated as an employee of the fourth respondent herein and hence, disputed the liability to pay the compensation.

5.Heard the learned counsel for the fourth respondent herein. Before the Commissioner of Workmen's compensation, a counter statement is filed by the fourth respondent herein, viz., Ramachandran, wherein, he has admitted that the said Murugan is employed as a driver in the Mill owned by the fifth respondent and he is the owner of the vehicle having Registration No.TN 72 R 2626, which is duly registered with the second respondent-insurance company before the Commissioner of Workmen's Compensation, namely, the appellant herein.

6.The fifth respondent herein also filed a counter statement stating that the said deceased Murugan was working as a driver in his company and the fourth respondent herein is one of the partner of the Mill. Whenever the fourth respondent is having job, he engage the deceased Murugan to act as acting driver and during the absence of the employment at the fifth respondent herein and the said deceased Murugan used to work as a driver for the fourth respondent on those days and no salary will be paid by the fourth respondent during the period of days of employment with the fifth respondent and the fifth respondent will alone pay for those period. The said factual position is admitted by both the respondents 4 and 5.



7.Taking into consideration, the oral evidence of the opposite party before the Commissioner and taking note of the fact that no salary was paid by the fifth respondent herein for the deceased Murugan on the date of his absence and also the admitted position that the deceased Murugan was employed on those days with the fourth respondent herein when called for and hence the commissioner has rightly come to the conclusion that the deceased is an employee of the fourth respondent. The above factual position which is admitted by both the respondents 4 and 5 and no salary is paid by the fifth respondent herein on those days and hence, the finding rendered by the commissioner of Workmen's Compensation Act that there exists an employer-employee relationship and on the above admitted factual position is hereby confirmed.

7(a). In view of the finding in the previous paragraph, both the substantial question of law stands negatived against the appellant. Since there was no challenge against the quantum of compensation and computation of criteria, the award passed by the Commissioner is hereby confirmed.

7(b).As the accident has taken place during his employment with the fourth respondent in the vehicle of the fourth respondent who is insured with the appellant insurance company and hence both the fourth respondent and the appellant insurance company are jointly liable to pay the compensation. The other directions of the Tribunal shall stand good.

8.Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (T&P)

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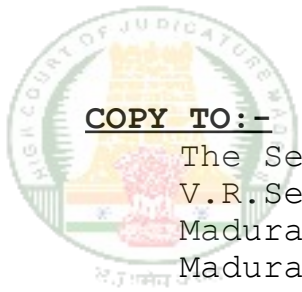
/ /2022

Sub Assistant Registrar(CS)

PJL

To

The Deputy Commissioner for Workmen's Compensation,
Tirunelveli.



COPY TO:-

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

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**JUDMGMENT MADE IN
CMA (MD) No.765 of 2014
19.04.2022**

SP (CO)
GC (04.05.2022) 4P 4C