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C.M.A.No.1031 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1031 of 2011

and

M.P.No.1 of 2011

The Manager,
New India Assurance Company Ltd.,
No.45, 5th Floor, Moore Street,
2nd Line Beach Road,
Chennai – 1.

... Appellant / 3rd Opposite Party

Vs.

1.Lakshmi
2.Kamala
3.Selvaraj

... Respondents 1 to 3/Applicants

4.The General Manager,
Ultratech Cement Co. Ltd.,
Chitteri Village,
Arakkonam Taluk,
Vellore District.

... 4th Respondent / 1st Opposite Party

5.Jayalakshmi

... 5th Respondent / 2nd Opposite Party

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 24th day of January 2011 made in W.C. Case No.245 of 2009 on the file of Court of



C.M.A.No.1031 of 2011

Commissioner for Workmen's Compensation – II (Deputy Commissioner of Labour – 2) Chennai – 6.

For Appellant : Mr.Elveera Ravindran

For Respondents : Died [R1 & R3]
Mr.P.Krishnan [R2]
M/s.T.S.Gopalan & Co. [R4]
No appearance [R5]

JUDGEMENT

The Civil Miscellaneous Appeal is filed against the order passed in W.C. Case No.245 of 2009 on the file of Court of Commissioner for Workmen's Compensation – II (Deputy Commissioner of Labour – 2) Chennai – 6.

2. The respondents 1 to 3 are the wife and parents of the deceased Munusamy. It is the alleged that the deceased was employed as a Coolie under the fourth respondent/first opposite party Company on daily wage basis since 1995 and was earning a sum of Rs.150/- per day. He was doing loading and unloading the goods in the lorries. Whileso, on 24.06.2006, at 5.30 p.m. a lorry bearing Reg.No.TN 45 792, driven by one Sankar was returning to Arakkonam from Velachery after having



C.M.A.No.1031 of 2011

WEB COPY

unloaded the cement bags and the deceased and one Babu @ Kutty were in the said lorry. When the lorry was nearing Arakkonam i.e., in between Parameswaramangalam and Manjambadi in the Kancheepuram to Arakkonam route at about 09.30 p.m., the driver of the said lorry had driven the same in a rash and negligent manner. At that time, a bus from Andhra Pradesh proceeding to Kancheepuram was coming in the Opposite direction and the driver of the lorry suddenly went on his left side, lost control and dashed against the iron fencing gate put up by the Railways and turned to the right side and plunged into a ditch, as a result of which, the deceased and the said Babu were thrown out of the lorry and fell down, due to which, the deceased sustained head injury and the said Babu sustained injury on his heels, lower jaw and the tongue. Immediately, the deceased was taken to Government Hospital, Arakkonam and he was taken for further treatment on the advice of the doctors to the Government General Hospital, Chennai and on the way, he died. Thereafter, the applicants filed an application claiming a sum of Rs.10,00,000/- before the Commissioner for Workmen's Compensation – II (Deputy Commissioner of Labour – 2) Chennai under the Workmen Compensation Act. After adjudication, the Deputy Commissioner of



C.M.A.No.1031 of 2011

WEB COPY

Labour passed an order awarding a sum of Rs.4,00,090/- as compensation. Aggrieved by the said order, the appellant/insurance company has preferred the present appeal.

3. The learned counsel appearing for the appellant submitted that in the claim petition, it was admitted that the deceased was an employee of the fourth respondent and there is no relationship between the deceased and the fifth respondent/owner of the lorry and the fifth respondent's lorry was insured with the appellant. However, on extraneous consideration, the Workmen Compensation Court had arrived at a conclusion that there was an employee-employer relationship between the deceased and the fifth respondent, which is perverse. In the absence of employee-employer relationship, the appellant need not to pay any compensation to the claimants. Accordingly, he prays for allowing the appeal.

4. Per contra, the learned counsel appearing on behalf of the respondents 1 to 3 submitted that, the deceased was employed with the fourth respondent on daily wage basis and received a salary of Rs.150/- per day and whenever there was a loading and unloading work, the fourth



C.M.A.No.1031 of 2011

WEB COPY

respondent sent the contract employees in the particular lorry. In that process, the fifth respondent engaged the deceased, during which, due to the rash and negligent driving of the driver of the lorry, the deceased sustained grievous injuries and lost his life. At the relevant point of time, there was an employee-employer relationship in between the deceased and the fifth respondent, since the fifth respondent availed the services of the deceased, thereby the Commissioner of Workmen Compensation arrived at a conclusion that there was employee-employer relationship between the fifth respondent and the deceased and awarded compensation, which does not require interference. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the respondents 1 to 3 and perused the materials available on record.

6. The facts in the present case are not disputed with regard to the employment of the deceased under the fourth respondent and the engagement of the lorry belonging to the fifth respondent by the fourth



C.M.A.No.1031 of 2011

respondent for the purpose of carrying the goods, which were loaded and unloaded by the deceased and the other person, Babu @ Kutty. The accident is also not in dispute. The only ground on which the appellant seeks to set aside the order with regard to compensation is that the deceased was not employed with the fifth respondent, but was employed by the fourth respondent and, therefore, the appellant, who is the insurer of the vehicle, is not required to pay the compensation.

7. There is no quarrel with the fact, and even admitted by the appellant that the vehicle, belonging to the fifth respondent was taken on hire by the fourth respondent for the transportation of goods. The deceased was employed under the fourth respondent and was made to travel in the vehicle belonging to the fifth respondent, which met with the accident resulting in the death of the deceased. It is to be pointed out that once the vehicle is given on hire to the fourth respondent by the fifth respondent, the insurer is bound to indemnify the act of the fourth respondent, who steps into the shoes of the fifth respondent and in such a case, the deceased would be covered under the terms of the policy, as the employer-employee relationship between the deceased and the fourth



C.M.A.No.1031 of 2011

WEB COPY

respondent would get extended to the fifth respondent as well, as it is the vehicle, which is insured and not the fifth respondent and, once the fourth respondent steps into the shoes of the fifth respondent by means of the agreement to hire the vehicle, the owner of the vehicle gets transposed for the relevant point of time to the fourth respondent and, therefore, as the insurer of the vehicle, the appellant is indemnify the act of the fourth respondent and should therefore compensate the claimants for the death of the deceased.

8. The question of direct relationship between the deceased and the fifth respondent is not necessary to fasten the liability on the appellant to pay the compensation. Once the fourth respondent steps into the shoes of the fifth respondent on the basis of the agreement to hire the vehicle, the insurance policy on the vehicle stands extended to any act performed by the fourth respondent and as a consequence thereof, the sufferance of accident resulting in the death of the deceased, would necessarily have to be compensated by the appellant, which has been rightly held by the Commissioner for Workmen's Compensation, which does not require any interference at the hands of this Court.



C.M.A.No.1031 of 2011

WEB COPY

9. Accordingly, the appeal is dismissed and the order passed by the Court of Commissioner for Workmen's Compensation – II, (Deputy Commissioner of Labour – II) Chennai in W.C. Case No.245 of 2009, dated 24.01.2011 is confirmed. The appellant is directed to deposit the amount of compensation quantified by the authority to the credit of W.C. Case No.245 of 2009 within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the authority is directed to disburse the amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

05.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



C.M.A.No.1031 of 2011

WEB COPY To

- 1.The Court of Commissioner for Workmen's Compensation – II,
(Deputy Commissioner of Labour – II),
Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.No.1031 of 2011

M.DHANDAPANI, J.,

sp

C.M.A.No.1031 of 2011

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