



C.M.A.No.2753 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

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

C.M.A.No.2753 of 2008

National Insurance Company Ltd.,
No.25, Coimbatore Road,
Pollachi.

...Appellant

Vs.

1. K.Mumtaz
2. K.Mubeena Begam
3. R.P.Thirunanasambandam

...Respondents

Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act (Act 111/1923), as against the order passed in W.C.No.51 of 2004 dated 28.09.2006 by the Commissioner for Workmen's Compensation, Coimbatore.

For Appellant : Ms.N.B.Surekha

For Respondents : No Appearance, for R1 & R2
Notice not ready, for R3



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JUDGEMENT

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Challenging the order passed by the Commissioner for Workmen's Compensation, Coimbatore in W.C.No.51 of 2004 dated 28.09.2006, the insurer is before this Court.

2. The case of the appellant is that, the 1st and 2nd respondents filed a Workmen's compensation petition claiming a compensation of Rs.5,00,000/- on the ground that, the deceased Rabiudeen, son of the 1st respondent and brother of the 2nd respondent was working as an attender cum driver with the 3rd respondent and was earning a sum of Rs.3,000/- per month. Whiles, on 20.02.2003, under the direction of the 3rd respondent, when the deceased went to purchase certain medicines, he met with an accident and was admitted to the hospital and inspite of treatment he passed away on 01.03.2003. Since, the deceased had died in the course of the employment with the 3rd respondent, appellant herein as the insurer of the vehicle is entitle to compensate the claimants and thereby, the respondents 1 and 2/dependents of the deceased made a claim before the Commissioner for Workmen's Compensation, who in turn, vide impugned order awarded a compensation of Rs.2,35,091/-.



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Aggrieved with the said order, the present appeal has been filed by the insurer, questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that, there exists no employer-employee relationship between the 3rd respondent and the deceased and merely because the deceased was picking and dropping the 3rd respondent in the motorcycle would not cloth him with the status of an employee under the 3rd respondent. Further, when there is no employer-employee relationship between the 3rd respondent and the deceased, fixing of income of the deceased by the Commissioner for Workmen's compensation is wholly erroneous. It is the further submission of the learned counsel that, even otherwise, if the deceased had been working as a driver under the 3rd respondent, under the terms of the Policy, for the premium collected towards liability to the Personal Accident coverage to the owner/driver, the maximum entitlement of compensation is only Rs.1,00,000/- and the order of the Commissioner for Workmen's compensation beyond the said amount is not sustainable and there same is liable to be interfered with.



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4. Though notice was served on the 1st and 2nd respondents and their name were printed in the cause list, none appeared on their behalf. However, considering the period of pendency of this appeal, this Court is inclined to dispose of the same based on the material documents placed on record.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. Though it is the case of the appellant that, there exists no employer-employee relationship between the 3rd respondent and the deceased and in this regard, the appellant placed reliance on the deposition of RW1, however, curiously the 3rd respondent, who is the best person to speak about the employer-employee relationship had not been examined as witness by the appellant.

7. It is the specific claim made by the 1st and 2nd respondents before the Commissioner for Workmen's compensation that the deceased was working under the 3rd respondent and was looking after the clinic and was doing all the



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works entrusted to him by the 3rd respondent and he was earning a monthly income of Rs.3,000/-. Based on the materials submitted, the monthly income of the deceased was quantified by the Commissioner. In the absence of any contra evidence to disprove the employer-employee relationship, the findings recorded by the Commissioner for Workmen's compensation with regard to the employer-employee relationship between the 3rd respondent and the deceased cannot be held to be erroneous. Therefore, the appellant as the insurer is liable to compensate the 1st and 2nd respondents/claimants for the death of the deceased.

8. Further, a careful perusal of the Policy document reveals that, the coverage towards the Personal Accident for owner/driver of the vehicle is limited to a sum of Rs.1,00,000/- for which alone premium has been paid. When the insurer and the insured have specifically entered into a contract of insurance on particular terms, both the insurer and the insured are bound by the terms of the contract and the insurer cannot be made liable for any compensation beyond what has been accepted by the insurer.



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9. In the case on hand, the insurer/appellant having agreed to compensate towards the Personal Accident of owner/driver to the tune of Rs.1,00,000/-, the liability of the appellant can be fixed only at a sum of Rs.1,00,000/- and not beyond the said sum.

10. Therefore, this Court is of the considered view that, while the compensation arrived at by the Commissioner for Workmen's compensation is liable to be confirmed, however, the appellant would be entitled to pay only a sum of Rs.1,00,000/- along with interest at the rate of 12% per annum from the date of Workmen's compensation petition till the date of deposit and costs as awarded by the Commissioner for Workmen's compensation and for the balance amount which has been quantified by the Commissioner for Workmen's compensation, the claimants are at liberty to recover the same from the 3rd respondent/ employer of the deceased.

11. It is submitted by the learned counsel for the appellant that, pursuant to the deposit made by the appellant, an amount in excess of Rs.1,00,000/- has



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been withdrawn by the claimants. In such a scenario, it is for the appellant/ insurance company to recover the said amount from the 3rd respondent and to that extent, liberty is granted to the appellant to workout its remedy in accordance with law as against the 3rd respondent.

12. With the above modification to the impugned order passed by the Commissioner for Workmen's Compensation, Coimbatore in W.C.No.51 of 2004 dated 28.09.2006, this Appeal stands partly allowed. No costs.

11.10.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Commissioner for Workmen's Compensation,
Coimbatore.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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