



C.M.A.No.1817 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1817 of 2013

and

M.P.No.1 of 2013

M/s.Oriental Insurance Co. Ltd.
Divisional Office,
S.V.Complex,
No.179, Easwaran Koil Street,
Pondicherry -1.

... Appellant

Vs.

1. M.Ranjithkumar
2. V.Moorthy (Died)
3. Amutha
4. Sridharshini
5. Srivarshini

... Respondents

[R3 to R5 brought on record as LR's of the deceased Moorthy / 2nd respondent vide order dated 13.10.2023 in C.M.P.No.5881 of 2023 in C.M.A.No.1817 of 2013]

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workman's Compensation Act, 1923 against the order dated 03.04.2012 (received on 14.5.2012) passed in W.C.No.514 of 2007 on the file of the Commissioner for Workmen's Compensation (Office of the Deputy Commissioner of Labour, Salem).

For Appellant : Mr.R.Sivakumar

For Respondents : No Appearance [R1]



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R2 [Died]
steps taken vide CMP
Nos.5881, 5874, 5879
of 2023

JUDGEMENT

The Civil Miscellaneous Appeal is filed against the order dated 03.04.2012 passed in W.C.No.514 of 2007 on the file of the Commissioner for Workmen's Compensation (Office of the Deputy Commissioner of Labour, Salem).

2. It is the case of the appellant that the first respondent was working as a loadman under the second respondent and on 05.02.2007 when he was discharging his duties as loadman and accompanying the load in the lorry bearing registration No.TN 32 V 5049, the lorry met with an accident and turned upside down in which the claimant / first respondent suffered grievous injuries for which he took treatment in the Hospital. Since he had suffered disablement on account of injuries suffered in the accident, the claim petition was filed by the first respondent / claimant before the Deputy Commissioner for Workmen's compensation.



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3. The Tribunal on the basis of oral and documentary evidence, has passed the award for a sum of Rs.1,91,340/- along with 12% interest to be payable by the appellant / insurance company in favour of the claimant / first respondent. Aggrieved by the same, the present appeal has been filed by the insurance company.

4. The learned counsel for the appellant / insurance company submits that the first respondent has violated the policy conditions as 17 persons have travelled in the lorry which is exceeding the permissible limit, therefore there is violation of policy conditions. Therefore, the insurance company is not liable to pay the compensation. It is further his submission that the claim made by the claimant with regard to treatment taken by him in the hospital have not been established through proper medical documents and therefore the compensation awarded is wholly excessive.

5. Though the notice was served on the first respondent, no one appeared on behalf of the first respondent, however considering the pendency of the period of the appeal, this Court is inclined to dispose of



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the same based on the materials available on record.

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6. Heard the learned counsel for the appellant and perused the materials placed on record.

7. There is no dispute that the claimant have suffered injuries in the accident when he was discharging his work. The only ground on which the appellant claim that it is not liable to pay the compensation is that the lorry was carrying more than 17 persons which is in violation of the policy conditions and such violation does not cast any liability on the insurance company to pay the compensation. True it is that Ex.P.1 / F.I.R. shows that the lorry carrying the load was accompanied by loadman of which the claimant is also one. Though the lorry was covered under a package policy and the said fact was not disputed by the appellant when the lorry is covered by a package policy without exhibiting how the violation has happened it does not lie in the mouth of the insurance company to claim that it is not liable to pay the compensation on the ground that more than 17 persons were travelling in the lorry which is for the insurance company to establish its case that even in respect of a



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package policy, the lorry is not entitled to carry passenger above a particular number and only in such situation such claim can be made by the insurance company. In the absence of any document to show that there is violation of policy conditions, mere assumptions that policy condition was violated could not be a ground for rejecting the claim made by the claimant under the benevolent legislation to safe guard the interest of justice, the Tribunal appreciating the materials in the right perception has awarded the compensation.

8. Further, the stand of the appellant that no documents to establish that the claimant sustained injuries is also liable to be rejected for the simple reason that Ex.P.10, 11 and P.5 clearly shows the disability suffered by the claimant in the said accident and the Tribunal has rightly appreciated the above documents and has held that the claimant has suffered injuries in the accident for which the appellant is liable to pay the compensation is just and reasonable and no interference is warranted.

M.DHANDAPANI, J.

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9. With the above observation this appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

13.10.2023
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Index : Yes / No

Speaking order / Nonspeaking order

Netrual Citation Case : Yes / No

To

1.Workmen's Compensation (Office of the Deputy Commissioner of Labour, Salem)

2.The Section Officer, V.R.Section, High Court, Madras.

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CMP.Nos.5874, 5879 & 5881 of 2023
in CMA.No.1817 of 2013

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These petitions are filed by



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the petitioners seeking to condone the delay of 2467 days in filing the petition to set aside the abatement caused due to the death of the deceased V.Moorthy in the main appeal, to set aside the abatement caused due to the death of the deceased V.Moorthy and to bring on record the respondents 3 to 5 as the legal heirs of the deceased V.Moorthy in the main appeal.

2. Heard the learned counsel appearing for the respective parties.

3. Having satisfied with the reasons stated in the accompanying affidavits, these petitions are ordered.

13.10.2023

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Office to Note :

carry out necessary amendment

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