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C.M.A.No.1608 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.1608 of 2016
and C.M.P.No.12186 of 2016
&
C.M.P.No.1776 of 2023
in Cross Objection Sr.No.12366 of 2023**

The Oriental Insurance Company Ltd.,
W-115, 1st Floor, S.B.Complex,
3rd Avenue, Next to D.K. Kalyana Mandapam,
Near Rountana, Anna Nagar,
Chennai - 600 040.

... Appellant

Vs.

1. Vedayanagi
W/o.Late M.Subramani
2. Minor Inbavanan
S/o.Late M.Subramani
3. Minor Ezhilvanan
S/o.Late M.Subramani
4. Minor Vasantha Kumar
S/o.Late Subramani



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5. Renugambal

W/o.Late Muthusamy

[Minors 2 to 4 are represented by
their mother and next friend Vedanayagi
Mandaveli Street, Raman Kuppam Village,
Pollur Taluk, Tiruvannamalai District.]

6. Sridharan

S/o.S.K.Manavalan Naidu

... Respondents

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, against the order dated 12.05.2016 passed in E.C.No.145 of 2013 by the Commissioner for Workmen's Compensation-2 (Deputy Commissioner of Labour - 2, Teynampet, Chennai - 600 006).

For Appellant : Mr.R.Sivakumar

For Respondents : No appearance

COMMON JUDGMENT

The appellant Insurance Company has filed the present appeal challenging the order dated 12.05.2016 passed in E.C.No.145 of 2013 by the Commissioner for Workmen's Compensation-2 (Deputy Commissioner of Labour - 2, Teynampet, Chennai - 600 006).



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2. The case of the claimants is that the deceased was working under the sixth respondent in a brickyard and was earning a sum of Rs.7,000/- p.m.. On 06.08.2011 at about 11.00 p.m. while the deceased and co-workers were returning to their house in a mini lorry, the driver of the mini lorry drove the same in a rash and negligent manner, as a result of which, the deceased fell down from the mini lorry and sustained grievous injuries. Despite treatment, he died on 07.08.2011 at about 04.45 a.m. Since the deceased died while he was employed under the sixth respondent, the claimants filed a claim petition under the Workmen Compensation Act, 1923 seeking compensation.

3. The Commissioner, after analysing the oral and documentary evidence available on record, awarded compensation of Rs.5,79,979/- and directed the appellant Insurance Company to pay the same along with interest at 12% per annum.



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4. Aggrieved over the said order, the appellant Insurance Company has filed the present appeal.

5. Heard the learned counsel for appellant. There was no representation on the side of respondents.

6. This appeal was admitted by formulating the following substantial questions of law:

1. Whether the learned Deputy Commissioner is correct in coming to the conclusion that the deceased died during the course of his employment as a Loadman in the mini lorry bearing Registration No.TN.05-P-1030 when the claimants averred that the deceased was a worker in the Brick Chamber and travelled along with 11 unauthorised passengers in the said mini lorry ?
2. Whether the learned Deputy Commissioner is correct in coming to the conclusion that when the deceased was working in Brick Chamber travelled in the mini lorry died amount to an accident arising out of and in the course of his employment ?
3. Whether the learned Deputy Commissioner is correct in directing the appellant to pay the compensation amount to the respondents 1 to 5 herein when the policy under Exhibit R3 not covered the unauthorised passengers in the mini



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lorry ?

4. Whether the learned Deputy Commissioner is correct in awarding interest at the rate of 12% per annum from the date of accident, if the Insurance Company/appellant is not depositing the compensation amount within 30 days from the date of receipt of the order copy ?

7. The Commissioner has held that as per Ex.P1 - First Information Report and the evidence of PW-1, it was established that the deceased was an employee under the sixth respondent and while he was working as a load man, he died in the accident while he was travelling in the company vehicle. The said evidence has not been contradicted through any oral or documentary evidence by the respondents. Further, the Commissioner has given a finding that the vehicle was duly insured with the appellant insurance company. In view of the fact that the deceased was an employee under the sixth respondent and had died during the course of employment in the vehicle in which he had travelled, which was insured with the appellant, the Commissioner held that the appellant insurance company was liable to pay compensation. Therefore, the first substantial question of law is answered against the appellant.



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8. Further, the Commissioner has held that the investigation officer has failed to examine the employer and produce any document to prove that the deceased was employed under him and in the absence of the appellant insurance company failing to examine the employer / sixth respondent in order to establish the relationship between the sixth respondent and the deceased, the contention of appellant insurance company was solely based on the report of the investigation officer that the goods vehicle was used to carry people in violation of policy permit as the said report cannot be accepted for the reason that the employer-employee relationship between the deceased and sixth respondent was not properly investigated and the conclusion arrived at by the investigation officer is wholly unsustainable. The appellant not having placed any materials to controvert the aforesaid findings, the finding rendered by the Commissioner cannot be faulted with and, therefore, the second substantial question of law is also answered against the appellant.



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9. Insofar as the third substantial law is concerned, the finding of the authority that the deceased was an employee under the sixth respondent and had died during the course of his employment in the accident, the deceased cannot be said to be an unauthorised passenger in the vehicle and in view of the subsistence of the policy, the appellant is liable to compensate the claimants, is just and proper. Therefore, the third substantial question of law is also answered against the appellant.

10. Further considering the fact that the accident had happened in the year 2011 resulting in the death of the deceased, the Commissioner had ordered interest @ 12% per annum which is just and reasonable and does not require any interference. Accordingly, the fourth substantial question of law is also answered against the appellant.

11. Accordingly, the substantial questions of law are answered against the appellant and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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12. In view of the judgment passed in C.M.A.No.1608 of 2016, no orders are required to be passed in C.M.P.No.1776 of 2023 in Cross Objection Sr.No.12366 of 2023 which has been filed seeking condonation of delay of 306 days in filing the above cross appeal. Accordingly, C.M.P.No.1776 of 2023 in Cross Objection Sr.No.12366 of 2023 is closed. Consequently, the Cross Objection Sr.No.12366 of 2023 is rejected.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Commissioner for Workmen's Compensation-2
(Deputy Commissioner of Labour - 2,
Teynampet, Chennai - 600 006).
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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