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C.M.A.No.302 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.302 of 2016

And

C.M.P.No.2394 of 2016

National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai – 2.

... Appellant

Vs.

1.K.Mala
2.K.Prasad
3.K.Abarna
4.Gangammal
5.Pichaimuthu
6.M/s.Sical Logistics Ltd.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Deputy Commissioner of Labour – 1, Chennai dated 05.08.2015 made in W.C.No.109 of 2012.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.K.Suryanarayanan for R1 to R5
R6 – NRN

J U D G M E N T

This appeal has been filed challenging the order of the Deputy



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Commissioner of Labour – 1, Chennai, dated 05.08.2015 made in
W.C.No.109 of 2012.

2.The brief facts of the case is that on 04.03.2012, the first respondent's husband namely, P.Kaliyaraj was driving a tanker lorry containing soap oil bearing Registration No.TN 09 K 0060 from Chennai to Pondicherry at TPL Company on the instruction of the sixth respondent/ owner of the lorry. After arrival at TPL Company premises, the said P.Kaliyaraj and other tanker lorry drivers of the Company went to hotel for dinner by walking to the nearest road side hotel in Pondy Villupuram Road at about 20.30 hours. At that time, a TVS XL Motor Cycle bearing Registration No.PY 01 AW 8170 came in a rash and negligent manner and hit against the said P.Kaliyaraj, due to which, he sustained head injuries and was taken to Villianur Government Hospital and thereafter to Pondicherry Government Hospital and was finally admitted as inpatient at JIPMER Hospital at Pondicherry and he died on 05.03.2012.

3.Thereafter, the dependants of the deceased P.Kaliyaraj/ respondents 1 to 5 filed claim petition before the Deputy Commissioner of Labour – 1, Chennai. After adjudication, the Deputy



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Commissioner of Labour – 1, Chennai, fixed a sum of Rs.6,35,691/- as compensation and directed the appellant to deposit the compensation amount before the Court of Deputy Commissioner of Labour – 1, Chennai, by way of demand draft, within a period of 30 days and also observed that in default of such deposit, to pay interest at the rate of 12% from the date of the 30 days after the incident till the date of deposit. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that admittedly the accident happened on 04.03.2012 at about 20.30 hours, however, complaint was lodged by the co-employee on 05.03.2012 at 1.30 p.m. The vehicle mentioned in the F.I.R. is different from the vehicle mentioned in the claim petition. In the claim petition the vehicle insured with the appellant has been mentioned. Further, the accident happened when the deceased went to hotel for dinner by walking to the nearest road side hotel after unloading the soap oil and hence the accident did not happen during the course of employment. Hence, the Deputy Commissioner of Labour – 1, Chennai, fastening the entire liability on the appellant is not sustainable.



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5.In support of his contentions, the learned counsel appearing for the appellant relied upon the decision of the Hon'ble Apex Court reported in 2010 (2) TN MAC 609 (SC) [Mamtaj Bi Bapusab Nadaf and others Vs. United India Insurance Co. Ltd. and others] and the decision of this Court reported in 2002 ACJ 378 [New India Assurance Co. Ltd. Vs. A.Sharifa Bivi and others].

6.Per Contra, the learned counsel appearing for the respondents 1 to 5/ claimants submitted that the deceased was employed under the sixth respondent. On the fateful day, the deceased drove the tanker lorry containing soap oil from Chennai to Pondicherry on the instruction of the sixth respondent/ owner of the lorry and after arrival at TPL Company premises, the deceased and other tanker lorry drivers of the Company went to hotel for dinner by walking to the nearest road side hotel in Pondy Villupuram Road, thereby met with the accident and lost his life. Hence, the death happened during the course of his employment and the sixth respondent and the appellant Insurance Company are liable to pay compensation to the deceased.

7.The learned counsel appearing for the respondents 1 to 5/



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claimants further submitted that before the Deputy Commissioner of Labour – 1, Chennai, the first respondent examined herself as P.W.1 and marked exhibits Ex.P1 – F.I.R., Ex.P2 – Death Certificate, Ex.P3 – Post Mortem Certificate, Ex.P4 – Vehicle Registration Certificate, Ex.P5 – Insurance Policy, Ex.P6 – Lorry Trip Sheet, Ex.P7 – Xerox copy of Driving Licence, Ex.P8 – Vehicle Permit, Ex.P9 – Transfer Certificate of the deceased and Ex.P10 – Xerox copy of the Family Ration Card. The appellant Insurance Company neither examined any witness nor marked any exhibits.

8.In support of his contentions, the learned counsel appearing for the claimants relied upon the decision of the Hon'ble Apex Court reported in 2014 (2) TN MA 161 (SC) [Manju Sarkar and others Vs. Mabish Miah and others] and submitted that in the said decision, the Hon'ble Apex Court held notional extension applicable. In the present case, the deceased drove the tanker lorry containing soap oil from Chennai to Pondicherry on the instruction of the sixth respondent/ owner of the lorry and after arrival at TPL Company premises, the deceased and other tanker lorry drivers of the Company went to hotel for dinner, thereby met with the accident and lost his life. Hence, the death happened during the course of his employment and the sixth



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respondent and the appellant Insurance Company are liable to pay compensation to the deceased.

9.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5/ claimants and perused the materials available on record.

10.Admittedly, on 04.03.2012, the first respondent's husband namely, P.Kaliyaraj was driving a tanker lorry containing soap oil from Chennai to Pondicherry at TPL Company on the instruction of the sixth respondent/ owner of the lorry. After arrival at TPL Company premises, the said P.Kaliyaraj and other tanker lorry drivers of the Company went to hotel for dinner by walking to the nearest road side hotel in Pondy Villupuram Road at about 20.30 hours. At that time, a TVS XL Motor Cycle came in a rash and negligent manner and hit against the said P.Kaliyaraj, due to which, he sustained head injuries and was taken to Villiyanur Government Hospital and thereafter to Pondicherry Government Hospital and was finally admitted as inpatient at JIPMER Hospital at Pondicherry and he died on 05.03.2012.



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11.The accident and the manner in which the accident took place are not in dispute. The learned counsel appearing for the appellant vehemently contended that the accident happened on 04.03.2012 at about 20.30 hours, however, the complaint was lodged by the co-employee on 05.03.2012 at 1.30 p.m.

12.Admittedly, the co-employee lodged complaint before the law enforcing agency on 05.03.2012 at 1.30 p.m. The co-employee has specifically stated in the complaint that he along with 8 drivers including the deceased drove the tanker lorry loaded with soap oil and the sixth respondent instructed the tanker lorry drivers to unload the soap oil in the TPL Company premises. Accordingly, they halted the vehicle in the TPL Company premises and went to take dinner.

13.Ex.P4 – Vehicle Registration Certificate, Ex.P6 – Lorry Trip Sheet, and Ex.P8 – Vehicle Permit, marked on the side of the claimants would show that the vehicle was owned by the sixth respondent and insured with the appellant and the deceased met with



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road accident during the course of employment and notional extension is applicable and the claimants are entitled for compensation.

14.The decisions relied upon by the learned counsel appearing for the appellant is not applicable to the present case on hand, since, in the decision of the Hon'ble Apex Court reported in 2010 (2) TN MAC 609 (SC) [Mamtaj Bi Bapusab Nadaf and others Vs. United India Insurance Co. Ltd. and others], the vehicle in question was not involved in the accident and there has been no proximity or direct connection with the death of the workmen with the vehicle in any manner and in the decision of this Court reported in 2002 ACJ 378 [New India Assurance Co. Ltd. Vs. A.Sharifa Bivi and others], the learned Single Judge has clearly observed that in terms of Section 147 of the Motor Vehicles Act, 1988, the Insurance Company was liable to pay the compensation only when the driver was discharging his duty as a driver and not otherwise. Infact, the decision of this Court reported in 2002 ACJ 378 [New India Assurance Co. Ltd. Vs. A.Sharifa Bivi and others] is in favour of the claimants.

15.Similar issue was considered by the Hon'ble Apex Court in



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the decision relied upon by the learned counsel appearing for the claimants reported in **2014 (2) TN MA 161 (SC) [Manju Sarkar and others]**

Vs. Mabish Miah and others], the relevant portion of which reads as follows:

*"10.This Court has in the celebrated decision in **General Manager B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes**, AIR 1964 SC 193, laid down as follows:*

"Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As



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employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment.”

11.As rightly contended by learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under respondent Nos.1 and 2. The Courts below have misdirected themselves while dealing with this question and the finding rendered by them is perverse and unsustainable.

12. In the claim petition the appellants have stated that Sajal Sarkar at the time of death was aged about 22 years and used to get monthly wages of Rs. 4,500/- at the time of accident. The first appellant herein examined herself as PW1 in the trial and has reiterated the age and income of the deceased. Three documents were marked on her side. Her testimony deserves acceptance. As per Section 4 clause 1(a) of the Act where death results from the injury, 50% of the



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monthly wages of the deceased multiplied by the relevant factor would be the amount of compensation. In the present case the compensation would be a sum of Rs.2250 being 50% of the monthly wages multiplied by factor 221.37, which comes to Rs.4,98,082.50 and a further sum of Rs.10,000/- could be awarded towards funeral expenses as per Section 4 Clause (4). In the circumstances of the case we deem it just and proper to award interest at the rate of 9% per annum on the compensation from the date of claim petition.

13.A contention was raised by the learned counsel for the Respondent No.3 Insurance Company that they are not liable to pay the interest component and reliance was placed on the decision of New India Assurances Co. Ltd. Vs. Harshad Bhai Amrut Bhai Modhiya and another [(2006) 5 SCC 192] In the facts of the case on which the said decision arose, the contract of insurance entered into between the parties contained a proviso that the insurance granted is not extended to include any interest. In the present case there is nothing on record to show that respondent No.3 Insurance Company either pleaded about existence of



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such a clause in the contract of insurance or led any evidence to the said effect and hence the said decision will not help respondent No.3 in any way and the contention raised is devoid of merit.

14.In the result the appeal is allowed and the judgment and order of the Courts below are set aside and the claim petition is allowed and there shall be a Decree directing the respondents to pay a sum of Rs.5,08,082.50 as compensation together with interest at the rate of 9 per cent per annum from the date of claim petition with costs."

16.Perusal of the decision cited supra makes it clear that there is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment. In the present case, admittedly, the lorry was driven by the deceased from the premises of the sixth respondent and the same was halted in the TPL Company for un-loading the soap



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oil and the deceased met with road accident during the course of employment and notional extension is applicable and the claimants are entitled for compensation. Hence, the impugned order warrants no interference.

17.The civil miscellaneous appeal stands dismissed. The order of the Deputy Commissioner of Labour – 1, Chennai dated 05.08.2015 made in W.C.No.109 of 2012, is confirmed.

18.The appellant Insurance Company is directed to deposit the entire compensation amount to the credit of W.C.No.109 of 2012, before the Court of Deputy Commissioner of Labour – 1, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment, in the same terms as awarded by the Deputy Commissioner of Labour – 1, Chennai, i.e., in default of such deposit, to pay interest at the rate of 12% from the date of the 30 days after the incident till the date of deposit.

19.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Deputy Commissioner of Labour – 1,
Chennai.

M.DHANDAPANI,J.
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