



C.M.A.No.831 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.831 of 2016

and

C.M.P.No.4306 of 2020

Bashira

... Appellant

Vs.

1.N.Ashraff Hussain

2.M/S.New India Assurance Co.ltd,
No.35, Morre Street,
Parrys, Chennai-01.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923, against the decree and judgment dated 15.09.2015 made in W.C.No.151 of 2012 on the file of Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour-II), Chennai.

For Appellant : Mr.K.Varadhakamaraj



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For Respondent1 : Mr. B.Jawahar
For Respondent 2 : No appearance

JUDGMENT

The appellant herein/applicant has filed an application for compensation under Section 10 of Workmen's Compensation Act, 1923 in WC.No.151 of 2012 before the Deputy Commissioner of Labour-II, Chennai for the death of her son G.Ansari, who was employed under the 1st respondent, Mr.Ashraff Hussain.

2. It is the case of the applicant before the Deputy Commissioner of Labour- II that the deceased was driving the car from Vandhavasi to Chennai and when the car was proceeding near Uthiramerur, the passengers, who travelled in the car stopped the car and murdered the driver, the said Ansari and fled away with the car. Contending that the deceased Ansari was employed under the 1st respondent and had died, it was a clear case of an accident arising in the course of employment and therefore, the claimant,



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being the legal representative and mother of the deceased G.Ansari prayed for lumpsum compensation from the 1strespondent/ employer and the 2nd respondent/Insurance company.

3. The Insurance company as 2nd respondent before the Deputy Commissioner of Labour -II filed a counter denying the claims made by the mother of the deceased, including the employer-employee relationship between the 1st respondent and the deceased. It was also contended by the Insurance company that the Registration Certificate and the Insurance Policy in respect of the vehicle on the date of the incident was in the name of one D.Flora and in the absence of nexus between D.Flora and the deceased, the Insurance Company cannot be held responsible for paying any compensation to the deceased. The Insurance Company denied liability to compensate the mother of the deceased and sought for dismissal of the claim before the Deputy Commissioner of Labour-II, Chennai, thereby confirming the order under challenge.



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4. The 1st respondent/employer also filed a separate counter before the Deputy Commissioner of Labour-II, Chennai and admitted that the deceased Ansari was working under him. However, the 1st respondent sought for dismissal of the compensation claim in view of the delay of 6 years in approaching the Court and also for not proving her entitlement to receive the compensation.

5. The Deputy Commissioner of Labour-II, in W.C.No.151 of 2012 in and by order dated 15.09.2015 dismissed the claim petition holding that the claimant had not established that the incident occurred during the course of the employment.

6. A Civil Miscellaneous Petition in CMP.No.4306 of 2020 has been filed seeking production of additional evidence in the above appeal. The documents proposed to be marked are the copy of the Criminal Court



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judgment of Sessions Court, Tiruvannamalai and the Criminal Appeal order
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of this Court, to throw light on the relationship between the deceased and the 1st respondent, especially in the context of employer-employee.

7. This Court has perused the affidavit filed in support of this petition to adduce additional evidence. The documents sought to be filed as additional evidence throw light on the issues to be decided by this Court in the above Appeal.

8. Considering that the claim itself being for compensation pertaining to the death of the son of the appellant in very unfortunate circumstances, this Court deems it fit to allow the application for adducing additional evidence. Accordingly, C.M.P.No.4306 of 2020 is allowed.

9. The learned counsel for the 1st respondent also fairly contended and expressed no objection for the application being allowed. There is no



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representation on the side of the Insurance Company.

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10. No doubt, the Insurance Company has appeared and contested the matter before the Deputy Commissioner of Labour-II, Chennai. However, before this Court, there is no representation on the side of the 2nd respondent.

11. This Court, therefore allows CMP.No.4306 of 2020 and the two documents namely, the order of the Criminal Court (Sessions Court, Tiruvannamalai) dated 17.12.2007 is marked as Ex.P9 and the judgment of the Division Bench of this Court dated 30.04.2009 in Criminal Appeal Nos.89 and 151 of 2008 is marked as Ex.P10.

12. On going through the judgment of the Division Bench of this Court in Criminal Appeal Nos.89 and 151 of 2008 and the Criminal Court judgment in RC.No. 126 of 2006, it is seen that in respect of the very same incident, the criminal law had been set in motion. This Court had conclusively found that



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the deceased Ansari was employed under the 1st respondent. It is also to be noted that even in the counter statement filed by the 1st respondent before the Deputy Commissioner of Labour-II, the 1st respondent has categorically admitted to the fact that the deceased Ansari was employed under him.

13. In view of the above discussion and also the additional documents being taken into account, there is no difficulty for this Court to hold that the deceased Ansari was employed under the 1st respondent, the employer.

14. This Court, therefore necessarily has to overturn the findings of the Tribunal of the Deputy Commissioner of Labour-II in this regard.

15. Now, proceeding to decide the compensation payable to the claimant/appellant herein/mother of the deceased, this Court has taken note of the date of the accident i.e. 03.10.2005 and consequently, the notional income fixed at Rs.4000/- per month. Considering the age of the deceased at

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the time of the incident being 24 years, this Court falls back to Schedule 4 to Section 4 of the Workmen's Compensation Act, 1923 (Now Employee's Compensation Act, 1923).

16. The age of the deceased is 24 years. 218.47 is the factor provided in Schedule 4 and applying the said factor and taking the income at Rs.4000/- per month, the compensation amount is arrived as follows:-

$$4000*218.47*50/100= \text{Rs.}4,36,940/-$$

17. A sum of Rs.5000/- is additionally awarded towards Funeral Expenses. In view of the same, the appellant is entitled to a sum of Rs.4,41,940/- (Rupees four lakhs forty one thousand nine hundred and forty only) together with 12% interest from the date of incident i.e 03.10.2005, till the date of the deposit.

18. Regarding the liability, no doubt the Insurance Company even in



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the counter filed before the Deputy Commissioner of Labour-II, had denied its liability to pay the compensation to the appellant especially since the Registration Certificate and the insurance policy did not stand in the employer/1st respondent's name, but only in his predecessor's name, D.Flora.

19. The learned counsel for the 1st respondent relied on the decisions of this Court reported in **2018 (2) TN MAC 381** in the case of **Branch Manager, National Insurance Co. Ltd Vs Kannan** and contended that it was the duty of the purchaser of the vehicle to comply with the mandate of Section 157 of Motor Vehicles Act. However, even in the said judgment, this Court has held even in the case of non-fulfillment of the requirement under Section 157 of the Motor Vehicles Act, the Insurance Company would still be liable to pay the compensation.

20. The learned counsel for the appellant relied upon the judgments reported in **1) (2000) 5 Supreme Court Cases 113** in the case of **Rita**



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Devi(Smt) and others Vs New India Assurance Co.Ltd, 2) 2006 ACJ 1529
in the case of ***Shyama Devi Vs Union of India and another, 3) 2005***
ACJ1642 in the case of ***Branch Manager, Oriental Insurance Co.Ltd Vs***
S.KadarshawRowther and others, 4) 2007 ACJ 1415 in the case of ***Oriental***
Insurance Co.Ltd Vs D.Sakunthala and others, 5) 2013 ACJ 1982 in the
case of ***Branch Manager, National Insurance Co.Ltd Vs Rahmath and***
others, 6) 2014 (2) TN MAC 729 (SC) in the case of ***Mallamma (dead) by***
L.Rs Vs National Insurance Co.Ltd and ors.,7) 2017 (1) TN MAC 600 (SC)
in the case of ***BabbuMiyan and another Vs New India Assurance Co.Ltd, 8)***
2017 (2) TN MAC 505(SC) in the case of ***Firdaus Vs Oriental Insurance***
Co.Ltd, 9) 2018 (1) TN MAC 641 MADRAS in the case of ***Lakshmi Vs***
R.Viswanathan and United India Insurance Co.Ltd.

21. In so far as the death in the course of employment, the decisions, numbering 1,2 and 5 have been relied upon. This Court has already found that in the criminal proceedings, the employer-employee relationship has



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been found to exist between the deceased and the 1st respondent and the same has also become final. Consequently, there is no necessity to go into any greater detail in this regard.

22. In so far as the effect of non-transfer of the vehicle in the name of the purchaser, the learned counsel for the appellant relied on the judgment reported in **2014 (2) TN MAC 729 (SC)** in the case of *Mallamma (dead) by L.Rs Vs National Insurance Co.Ltd and ors.*, **2017 (1) TN MAC 600 (SC)** in the case of *BabbuMiyan and another Vs New India Assurance Co.Ltd*, **2017 (2) TN MAC 505(SC)** in the case of *Firdaus Vs Oriental Insurance Co.Ltd*, **2018 (1) TN MAC 641 MADRAS** in the case of *Lakshmi Vs R.Viswanathan and United India Insurance Co.Ltd*.

23. The Hon'ble Supreme Court, in the case of *Mallamma (dead) by L.Rs Vs National Insurance Co.Ltd and ors* reported in **2014 (2) TN MAC 729 (SC)** dealing with similar set of facts where the policy of insurance was



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not transferred, held that the liability was only on the insurer and Section 157 was a deeming provision.

24. In the case of *BabbuMiyan and another Vs New India Assurance Co.Ltd reported in 2017 (1) TN MAC 600 (SC)*, the Hon'ble Supreme Court held that even though the truck involved in the accident had been sold to someone else, it would not change the nature of employment of the deceased and ultimately, the Hon'ble Supreme Court of India held that the deceased died only in the course of employment and awarded compensation.

25. In the case of *Firdaus Vs Oriental Insurance Co.Ltd reported in 2017 (2) TN MAC 505(SC)*, the Hon'ble Supreme Court of India again dealing with similar set of circumstances where the vehicle had been sold on the date of the accident and name transfer had not been effected, held that the insurer was liable to pay the compensation.



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26.This Court, in the case of ***Lakshmi Vs R.Viswanathan and United India Insurance Co.Ltd*** reported in ***2018 (1) TN MAC 641 MADRAS*** applied Section 157 and held that there was a deemed transfer of certificate of insurance in favour of purchaser to whom the vehicle was transferred, with effect from the date of transfer and as long as the vehicle was covered by insurance on the date of the accident, the insurer alone would be liable to pay compensation and not the owner of the vehicle in fact that was the case which was also arose under the Workmen's Compensation.

27. This Court has carefully gone through the facts and also the ratio laid down by the Hon'ble Apex Court as well as this Court in the above referred judgments. Applying the same to the facts of this case, this Court finds that the mere fact that the vehicle has not been transferred in the name of the 1st respondent on the date of the incident, would not absolve the 2nd respondent/Insurance Company from paying the compensation to the appellant. Consequently, this Court holds that the entire liability to pay the



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compensation amount is on the 2nd respondent/Insurance Company.

28. In view of the above, the Civil Miscellaneous Appeal is allowed and the 2nd respondent/Insurance Company is directed to pay a sum of Rs.4,41,940/- together with the interest of 12% per annum from 03.10.2005 till the date of the deposit, within a period of six weeks from the date of receipt of a copy of this judgment. No costs.

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Internet:Yes
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
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To

1. The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour-II), Chennai.
- 2.M/S.New India Assurance Co.ltd,
No.35, Morre Street,
Parrys, Chennai-01.
- 3.The Section Officer
V.R.Section
High Court, Madras

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