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C.M.A. No.80 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.80 of 2022

1.Tmt Devagi
2.Minor Durga
3.Minor Balaji

...

Appellants

Vs.

1.Vasu
2.The Divisional Manager
United India Insurance Company Limited
T.K.M. Complex,
Vellore – Katpadi Road,
Vellore – 632 004.

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 20 of The Employees Compensation Act, 1923, against the order dated 11.07.2019 made in W.C.No.45 of 2015 (Old No.284 of 2009) on the file of the Commissioner for Workmen's Compensation and Joint Commissioner of Labour, Vellore.

For Appellants : Mr.C.Prabakaran
For Respondents : Mr.P.Sanakara Narayanan
for R2
No appearance for R1



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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the dismissal of the claim petition filed by the appellants.

2. The appellants filed claim petition in W.C No.45 of 2015 claiming compensation for the death of one Kumar, who died in the accident that took place on 08.12.2009.

3. According to the appellants the deceased was working as a driver in the auto belonging to the first respondent. On the date of accident, the deceased Kumar was driving the auto from Katpadi Railway Station alongwith passengers. While he was waiting at Sripuram Kovil, after dropping the passengers at Ariyur, the driver of another auto bearing Regn.No.TN23 H 3961 drove the same in a rash and negligent manner and dashed against the deceased. Due to the injuries sustained in the accident, the said Kumar died in the hospital on 09.12.2009. Hence, the appellants filed claim petition claiming compensation against the respondents.



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WEB COPY 4. The first respondent filed counter statement admitting the averments made in the claim petition.

5. The second respondent filed counter statement denying the averments made in the claim petition. They also denied that the deceased was working as driver under the 1st respondent; that the accident occurred during the course of his employment and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as PW1 and marked seven documents as Exs.P1 to P7. On the side of the respondent one Vasu was examined as RW1. No document was marked.

7. The Tribunal, considering the oral and documentary evidence, dismissed the claim petition holding that the appellants have not proved the employer – employee relationship between the first respondent and the deceased.



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WEB COPY 8. Aggrieved by the said order of dismissal, the appellants have preferred the instant appeal.

9. The learned counsel appearing for the appellants submitted that though the appellants have stated that the deceased met with an accident during the course of employment with the first respondent, the Labour Commissioner had erroneously dismissed the claim petition. The learned counsel further submitted that the deceased took the auto for dropping the passengers and after dropping, while crossing the road, met with an accident. In the light of such evidence let in by the appellants, Labour Commissioner ought to have seen that the deceased died during the course of employment and awarded compensation on that basis and prayed for allowing the appeal.

10. Per contra, the learned counsel for the respondent submitted that the first respondent is the brother of the deceased. The claim petition is not maintainable as the appellants have not established the employer – employee



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relationship with the first respondent and the deceased. Admittedly, the accident took place due to the rash and negligent driving by driver of the offending vehicle. However, no claim petition was filed as against the said auto driver or the insurance company with whom the auto was insured. The claim petition is frivolous and has been filed only to claim compensation under the Employees Compensation Act and hence the Tribunal had rightly dismissed the claim petition. Therefore, the learned counsel prayed for dismissal of the appeal.

11. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for the first respondent.

12. Heard the learned counsel appearing for the appellants as well as second respondent and perused the materials available on record.

13. The admitted facts are that the deceased and the first respondent are brothers. The first respondent is the owner of the auto which is said to have



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been taken by the deceased for dropping some passengers. The accident had taken place while the deceased was crossing the road and another vehicle was involved in the accident. FIR was registered against the driver of the offending vehicle namely auto bearing Regn.No.TN 23 H 3961. It is seen that the appellants have not pursued claim petition against the offending vehicle. Considering the fact that the appellants have not proved the employer – employee relationship between the first respondent and the deceased, this Court is of the view that the Tribunal was right in dismissing the claim petition. Though the first respondent has stated that the deceased was working under him, no documentary evidence was produced to prove the payment of salary or the employer – employee relationship. The Tribunal also found that there is no evidence to establish that the deceased had taken the auto during the course of employment and met with the accident. For all the above reasons, this Court is of the view that the finding of the Tribunal cannot be faulted and there is no reason to interfere with the said finding. The appeal filed by the appellants is liable to be dismissed.



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14. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 11.07.2019 made in W.C.No.45 of 2015 (Old No.284 of 2009) on the file of the Commissioner for Workmen's Compensation and Joint Commissioner of Labour, Vellore. No costs.

09.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Joint Commissioner of Labour,
Vellore.

2.The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

rgr

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