



C.M.A.No.630 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.630 of 2023
and C.M.P.No.5227 of 2023

United India Insurance Company Ltd.,
No.44, GST Road,
Guindy,
Chennai – 600 032.

.. Appellant

Vs.

1.Vidyavathi
2.JSR Infra Developers Pvt. Ltd.,
JSR Towers, 4th Floor,
17/8, Vijayaragava Road,
T.Nagar, Chennai – 600 017.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923, against the order dated 10.08.2022 made in B1.Case NO.2755 of 2021, on the file of the Commissioner of Employees' Compensation (Joint Commissioner of Labour – 2), Chennai –6.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents

For R1 : Mr.N.Mugilvannan Nambi

For R2 : No appearance



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J U D G M E N T

The above appeal has been filed challenging the order of the Commissioner for Employees' Compensation (Joint Commissioner of Labour-2), Chennai, made in B1.Case.No.2755 of 2021 dated 10.08.2022.

2. Though notice has been served on the 2nd respondent, none has entered appearance for the 2nd respondent.

3. The appeal arises under the following circumstances:

(a) An employee of the 2nd respondent herein while returning from his office and on the way home, after performing his office duties, met with an accident; that the employer thereafter gave a notice of the accident to the Joint Commissioner of Labour – 2. On the basis of the said notice, the Joint Commissioner of Labour – 2 sent notice of hearing to the appellant herein stating that the employer was insured with the appellant Insurance Company. The employer also stated and let in evidence to show that the deceased employee was performing his duties as an employee at the time of



accident. The appellant resisted the stand taken by the employer and stated that the employee died only while returning home and it cannot be stated that the employee died in the course of employment and in such circumstances, the appellant is not liable to pay compensation under the insurance contract entered into between the employer and the appellant.

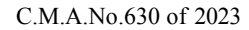
(b) The Joint Commissioner of Labour – 2, after considering the oral and documentary evidence held that the employee died in the course of employment and further held that the appellant was liable to pay compensation to the tune of Rs.10,75,100/- (Rupees Ten Lakh Seventy Five Thousand and Hundred only) together with interest at the rate of 12% from the date when it became due till the date of payment. Aggrieved by the said award passed by the Joint Commissioner of Labour – 2, the appellant has preferred the above appeal.

4. The learned counsel for the appellant submitted that the claimant, who is the wife/legal heir of the deceased and the employer had not established that the employee/deceased died during the course of



employment. The deceased died in a road accident and hence, it is not in the course of employment. The learned counsel for the appellant further submitted that in any event, the liability of the Insurance Company arises out of insurance contract entered into between the Insurance Company and the employer, which states that the Insurance Company is not liable to pay interest or penalty on the award amount, as per the terms of the policy. The learned counsel for the appellant pointed out to Ex.A2, the Insurance policy document in support of his submission.

5.(a). The learned counsel for the 1st respondent claimant submitted that the employer had given notice of the accident on 31.03.2021 within the time stipulated under the Act. The employer had stated in the said notice that the deceased was working as a Store Incharge and it was a part of his duty to travel in that road to verify all the places where the stock belonging to the employer were stored and that the accident took place when the employee/deceased had inspected the stock in one place and was moving to the next place for inspection. This aspect has not been refuted by the Insurance Company by any legally acceptable evidence. As regards the



<https://www.mhc.tn.gov.in/judis>



and documentary evidence, found that in the absence of any contrary evidence, let in by the appellant, the claimants have established that the employee died in the course of employment. The said factual finding of the Joint Commissioner of Labour – 2 cannot be faulted. Therefore, this Court is inclined to confirm the finding of the Joint Commissioner of Labour – 2 in so far as he holds that the deceased died during the course of employment with the 2nd respondent. Consequentially, in view of the insurance contract entered into between the employer and the appellant Insurance Company, the appellant is liable to pay the compensation amount.

8. However, this Court finds that the appellant is not liable to pay the interest amount as awarded by the Joint Commissioner of Labour – 2. The appellant is liable to pay only the principal amount of Rs.10,75,100/- to the claimant. As per Ex.A2, the appellant is not liable to pay interest or penalty on the award amount.

9. In this regard, it is relevant to rely upon the observations of the Hon'ble Supreme Court in the case of *New India Assurance Co.Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Others* reported in



MANU/SC/8127/2006 and the same is squarely applies to the facts of this case. The relevant observations are as follows:

"18. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts."

10. In the instant case as stated earlier the perusal of Ex.A2 clearly shows that the appellant had not undertaken the liability and interest or penalty on the award amount. However, the employer /2nd respondent is liable to pay interest on the award amount to the claimant. It is needless to



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say that the said amount can be recovered from the 2nd respondent as per the procedure prescribed under Section 31 of the Employees' Compensation Act. It is also stated that the appellant has deposited a sum of Rs.13,53,625/- with the Joint Commissioner of Labour – 2. After payment of Rs.10,75,100/- to the claimant, the Joint Commissioner of Labour – 2 shall refund the balance amount to the appellant. The Joint Commissioner of Labour-2 may take steps for recovery of the interest amount from the employer as expeditiously as possible and pay it to the claimant.

11. In fine, the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

Index:yes/no
Internet:yes/no
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To

The Commissioner of Employees' Compensation
(Joint Commissioner of Labour – 2),
Chennai – 6.



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SUNDER MOHAN.J.,

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