



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018**

National Insurance Co.Ltd.,
2nd Floor, 81-D, Chetty Street,
Opposite to Bus Stand,
Tiruchengode Taluk,
Namakkal District.

...Appellant

Vs.

1. Sangeetha
2. Minor Logunath
(Minor represented by next friend, guardian and mother Sangeetha)

3. Aarayee
4. Chinnamuthu
5. C.Ramasamy

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the Award dated 26.03.2018 made in E.C.No.598 of 2015 (Old W.C.No.640 of 2014) by the Commissioner for Employee's Compensation Court, Coonoor, Nilgiris (The copy of the Award was served on the appellant on 09.04.2018 by R.P.A.D)



WEB COPY



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

For Appellant : Mr.S.Vadivel

For Respondents : Mr.T.S.Arthanareeswaran
for R1 to R4

No Appearance - R5

JUDGMENT

This appeal is filed challenging the Award dated 26.03.2018 made in E.C.No.598 of 2015 (Old W.C.No.640 of 2014) by the Commissioner for Employee's Compensation Court, Coonoor, Nilgiris.

2 The appellant is the Insurance Company, respondents 1 to 4 are the claimants and the fifth respondent is employer of the deceased.

3 The respondents 1 to 4/claimants filed claim petition in E.C.No.598 of 2015 claiming compensation of Rs.25,00,000/- for the death of Palanisamy, who is husband and father of the first and second claimants respectively and son of the third and fourth claimants and fifth respondent is the employer of the deceased.



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

4 The claim petition was contested by both the appellant/Insurance Company and the fifth respondent employer of the deceased. They filed separate counter denying all the allegations apart from disputing the liability.

5 Before the Commissioner, on the side of the claimants P.W.1 was examined and Exs.P1 to P10 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and no documentary evidence was produced. On behalf of the employer of the deceased, no oral and documentary evidence was let in.

6 The Commissioner for Employees Compensation, on an assessment of entire evidence on record, fixed liability on the appellant/Insurance Company and awarded a sum of Rs.7,72,590 including Rs.5,000/- towards funeral expenses as compensation along with 12% interest and directed the appellant/Insurance Company to pay the award amount. Challenging the liability, the Insurance Company has filed the present appeal.

7 Learned counsel appearing for the appellant/Insurance Company would submit that it is alleged by the claimant that the deceased, who is the



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

employee of the fifth respondent died during the course of employment as Driver of the Vehicle bearing Reg.No.TN 34 Q 3224, which was insured with the appellants. It is further claimed that the deceased died due to poisonous snake bite during the course of employment. But the claimants failed to prove the cause and place of death of the deceased. There was no FIR and the body of the deceased was not subjected to postmortem to prove the cause of death. There is no report to prove the death of the deceased and the same had taken place during the course of employment. In the absence of same, fixing liability on the appellant/Insurance Company is perverse.

7.1 Even the employer viz. the fifth respondent has stated that he did not know the exact place where the deceased sustained injuries and the Commissioner also not given any clear finding with respect to place and cause of the death. Further at the time of accident, the deceased did not possess valid driving license. The claimants produced license of the deceased, which is permitted only for LMV, whereas, at the time of accident, the deceased driven the Tractor, for which he did not possess valid driving license. Therefore the appellant/Insurance company is not liable pay the compensation.



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

WEB COPY

8 Learned counsel appearing for the respondents 1 to 4/claimants would submit that while the deceased was removing the corn stick (Chola thattai), which was stuck between the tires of the Tractor, a poisonous snake bit the deceased and he immediately was taken to Rasipuram Government Hospital, but, the deceased succumbed to the snake bite. At the time of death, the deceased was working under the fifth respondent, whose vehicle was insured with the appellant/Insurance Company. Even though FIR was not registered and the body of the deceased was not subjected to postmortem, the fact remains that the deceased went for job and during the course of employment due to poisonous snake bite, the deceased died. Even the reply received through RTI would clearly reveal that the deceased was admitted in the Rasipuram Government Hospital and due to emergency situation, the Hospital authority could not inform the police and the deceased died in the Hospital. The employer of the deceased did not deny the employment of the deceased with him on the date of occurrence. The Commissioner, considering all these facts, has rightly fixed the liability on the appellant/Insurance Company, which does not call for any interference of this Court.

9 Heard the learned counsel appearing for the appellant and the respondents 1 to 4/claimants and perused the materials available on record.



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

WEB COPY

10 Admittedly the claimants are the dependents of the deceased. The case of the claimants is that the deceased was employed as Driver under fifth respondent and during the course of employment due to poisonous snake bite, the deceased died. The fifth respondent, who is the employer of the deceased has not denied the employment of the deceased under him and has not stated that at the time of occurrence he has not given any employment to the deceased. It is proved from Exs.P9 and 10 the documents under RTI Act that the deceased was admitted in the Hospital and the Doctor also treated the deceased, but, however, he died.

11 The claimant, who claims compensation under the Employee's Compensation Act, 1923, have to prove the deceased died during the course of employment and he was employee of the employer. In this case, the employer was added as fifth respondent and he has not denied the employer and employee relationship and he also has not denied the injury sustained by the deceased during the course of employment. The Commissioner has rightly held that the accident had occurred during the course of employment and there is no contra evidence.

12 As far as the liability of the appellant/Insurance Company is concerned, the main contention is that the deceased did not possess valid driving



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

license. It is not the case of rash and negligent driving and it is the case during the employment under the fifth respondent, the deceased died. Even assuming that while the deceased driving the Tractor, he sustained injury, the learned counsel appearing for the claimants pointed out that the Tractor comes under Light Motor Vehicle and not HMV, for which there is no contra or proper explanation from the appellant. However, the fact remains that the deceased sustained poisonous snake bite injury and hence mere non possession of valid driving license may not be a sole ground to reject the claim of the dependents of the deceased employee.

13 As far as the quantum of compensation is concerned, there is no dispute by the appellant. This Court finds that the deceased was in employment under the fifth respondent and he died during the course of employment. There is no perversity in the finding rendered by the Commissioner and there is no merit in the appeal and the same is liable to be dismissed.

14 Accordingly the Civil Miscellaneous Appeal is dismissed. The appellant is directed to deposit award amount before the Commissioner and the Commissioner is directed to credit the award amount directly to the account of the claimants without any formal application as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The*



C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018

WEB COPY

Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others). As far as share of minor claimant is concerned, the Commissioner is directed to deposit the amount in any one of the nationalised Bank and the first claimant/mother of the minor claimant is entitled to withdraw the interest accrued till the minor attains majority. Connected miscellaneous petition is also closed. There shall be no order as to costs.

14.09.2023

cgi

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Commissioner for Employee's Compensation Court,
Coonoor, Nilgiris
2. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



*C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018*

P.VELMURUGAN. J.,

cgi

**C.M.A.No.2708 of 2018 and
C.M.P.No.20488 of 2018**

14.09.2023