



Judgment dated 11.09.2023 in
C.M.A.No.2969 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2969 of 2018

and

C.M.P.Nos.22514 of 2018 and 12010 of 2019

Royal Sundaram Alliance Insurance
Company Limited,
No.21, Pattulos Road,
Chennai-600 002.

.. Appellant

Vs.

1. Tmt.Poongodi

2. Minor Gowtham

3. Minor Pradeed

(Minors are represented by their mother Poongodi)

4. Govindammal

5. Tmt.Chinnapappu

.. Respondents

Civil Miscellaneous Appeal filed under Section 30 of the
Employee's Compensation Act, 1923, against the order dated
30.07.2018 passed in W.C.Case No.61 of 2017 on the file of the Court

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for Workmen's Compensation (Joint Commissioner of Labour),
Salem.

For appellant : Mr.Elveera Ravindran

For respondents : Mr.C.Kulainthaivel for RR-1 to 4

No appearance for R-5 (notice served)

JUDGMENT

The appellant/Insurance Company has filed the present appeal challenging the order dated 30.07.2018 passed by the Commissioner for Workmen's Compensation (Joint Commissioner of Labour), Salem, fixing the compensation at Rs.6,52,422/- to the respondents 1 to 4 herein (claimants) who have filed the claim petition before the said Commissioner.

2. The factual matrix of the claim petition filed by the respondents 1 to 4/claimants, is as follows:

One Murugan was working as Driver in respect of the Multi Axle Goods Vehicle (Taurus Lorry), bearing Registration No.TN-34-



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F-5152 belonging to the fifth respondent herein and the said Murugan was paid Rs.10,000/- per month as salary and Rs.250/- as Batta per day. When the said Murugan was in duty and when he parked the said vehicle in the Truck Parking Section 26, Jai Hind Transport Office, New Timber Market, Chandigarh, Uttarakhand (Chandigarh) State and waiting for booking the load towards downwards (return) trip, and due to halt, the Murugan was sleeping in the said lorry's cabin after dinner. On 09.01.2012 in the night hours, some unknown robbers attacked the said Murugan and murdered him and robbed of all the things. With regard to the said incident, the Uttarakhand (Chandigarh) State, Bapu Dham Colony Police registered a case in Crime No.201201130067 and handed over the body of the deceased Murugan after conducting post-mortem in the Government Medical College Hospital at Chandigarh. At the time of the incident, the deceased Murugan was 32 years old and he was the only earning member of the entire family. He was earning Rs.12,000/- (approximately) per month by way of his profession as Driver. Due to sudden demise of the deceased Murugan, the claimants are

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struggling for even basic life needs and necessities. According to the claimants, the death had occurred during the course of and out of the employment of the deceased Murugan as Driver. The claimants prayed for Rs.15 lakhs as compensation due to the death of the said Murugan.

3. The appellant/Insurance Company has filed counter before the Commissioner for Workmen's Compensation (Joint Commissioner of Labour) disputing the age of the deceased Murugan, his salary and his employment. It is also stated that there was no employer-employee relationship between the deceased Murugan and the fifth respondent herein.

4. Before the said Commissioner, P.W.1 Poongodi was examined and Exs.P-1 to 12 were marked. On the side of the Insurance Company, R.W.1 was examined and Ex.R-1 was filed.

5. After enquiry, the said Commissioner for Workmen's



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Compensation passed an order directing the appellant/Insurance Company to pay the compensation at Rs.6,52,422/- and a sum of Rs.5,000/- was also awarded for funeral expenses. The Commissioner for Workmen's Compensation awarded interest @ 12% from the date of accident till the date of deposit. Challenging the said compensation, the Insurance Company is before this Court by way of the present appeal.

6. Learned counsel for the appellant/Insurance Company submitted that the death of the deceased was not due to the accident and the claimants have not proved that the death is due to the incident during the course of employment. When the claimants (respondents 1 to 4 herein) have filed the claim petition under the Employee's Compensation Act (Workmen's Compensation Act), it is their duty to prove that the incident had occurred only during the course of employment and due to the said incident, he sustained injuries and that he succumbed to the injuries.



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7. Learned counsel for the appellant/Insurance Company further submitted that the claimants have not proved that the incident had occurred during the course of employment and only during the course of employment, he succumbed to injuries. Therefore, in the absence of the said fact having not been proved, the claimants are not entitled to get any compensation under the Employee's Compensation Act.

8. Learned counsel for the appellant/Insurance Company further submitted that the insurance policy is not covered under the Employee's Compensation Act and it is covered only under Section 148 of the Motor Vehicles Act. Since the policy covered only for the road accident claim, the same will not be applicable in respect of the incident that had occurred during the course of employment. Hence, the learned counsel appearing for the appellant/Insurance Company submitted that they are not liable to pay the compensation.

9. The learned counsel appearing for the appellant/Insurance



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Company further submitted that even the case of the claimants is that the deceased was murdered by some unknown persons and that being the case, the claimants have not proved that the accident arose out of and during the course of employment and the claimants have not proved that the deceased sustained injuries during the course of employment and only due to that, he succumbed to the injuries. Therefore, in the absence of the same, the claimants are not entitled to get any amount as compensation. The Commissioner for Workmen's Compensation has not considered the liability in proper perspective and the claimants have not proved that the deceased died due to the said incident and the same is not during the course of employment. Therefore, learned counsel appearing for the appellant/Insurance Company submitted that the impugned order of the Commissioner for Workmen's Compensation warrants interference of this Court.

10. Per contra, learned counsel appearing for the respondents 1 to 4/claimants submitted that, admittedly, the deceased was working

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as Driver and went for delivering the goods and at that time, he sustained injuries, due to which, he succumbed to death. Even the medical report has not proved otherwise. The post-mortem Doctor has stated that there is no doubtful substance available in the body of the deceased and the Doctor is not able to come to the conclusion about the cause of the death. Further, while the deceased was in employment, the incident has occurred and it is only incidental death and that the deceased Murugan sustained injuries only due to the said incident that has occurred during the course of employment. Thus, the claimants have proved their case with probable materials and it is not the duty cast upon the claimants to prove that their claim is beyond reasonable doubt. Since the death of the deceased is proved and that due to the injuries, he succumbed to death, which is only during the course of employment.

11. Learned counsel appearing for the respondents 1 to 4 / claimants submitted that as per Section 4 of the Workmen's Compensation Act, the Central Government has fixed the minimum



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wages of Rs.8,000/- per month during the relevant period and the age of the deceased at the time of the alleged incident was 32 years and Schedule-IV to the said Act would apply to the case of the claimants.

12. Heard both sides and perused the materials available on record.

13. Admittedly, the deceased was working under the fifth respondent herein. The fifth respondent was insured with the appellant/Insurance Company. The deceased was working as Driver. When he went for his duty, he died, and thus, the deceased died during the course of his employment. Even the post-mortem report Ex.P-2 shows that the deceased sustained certain injuries. However, the Doctor has not stated about the cause of injuries/death of the deceased. It is clear from the records that the deceased sustained injuries only during the course of employment. In the absence of any contra evidence, the Commissioner for Workmen's

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Compensation has rightly observed that the deceased died during the course of employment and he sustained injuries only due to the alleged incident and since the Employee's Compensation Act is a beneficial Legislation, more so, over-all, it is a social security Legislation and unless the contra is proved, the claimants cannot be denied of their legal entitlement of compensation. In the case on hand, the claimants have proved that the deceased sustained injuries during the course of employment and he succumbed to the injuries. The Commissioner for Workmen's Compensation has come to the conclusion that the deceased sustained injuries only during the course of employment and he succumbed to the injuries. There is no contra evidence to the same. Therefore, this Court does not find any ground warranting interference in the impugned order passed by the Commissioner for Workmen's Compensation.

14. The appellant is the insurer of the vehicle in question and the employer of the deceased is the fifth respondent. The appellant/Insurance Company is liable to pay compensation for the

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loss caused to the employee (deceased) during the course of employment. Accordingly, the finding of the Commissioner for Workmen's Compensation that the deceased died only during the course of employment, is hereby confirmed. There is no reason to interfere with the findings of the Commissioner for Workmen's Compensation (Joint Commissioner of Labour) regarding the liability of the appellant/Insurance Company to pay the compensation.

15. As far as the quantum of compensation awarded by the Commissioner for Workmen's Compensation, is concerned, since the claimants have filed the claim petition under the Employee's Compensation Act and as per Section 4(1)(a) of the Workmen's Compensation Act, it is clear that the minimum wages of 50% have to be taken into consideration for calculating the compensation. Since at the time of the incident, the deceased was 32 years old, proper factor to be applied is 203.85 as per Schedule IV to the said Act. 50% of the wages is Rs.4,000/- (8,000/2). Accordingly, the compensation is fixed at Rs.8,15,400/- (4,000 x 203.85). In addition to this

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compensation, the claimants are entitled for funeral expenses at Rs.5,000/- as awarded before the lower forum. Resultantly, the total compensation is Rs.8,20,400/- (8,15,400 + 5,000). Even though the claimants have not preferred any separate appeal, there is no bar for this Court in appropriate cases to enhance the compensation, if it has not reflected the "just and fair" compensation. The appellate Court can always see to it that the claimants are entitled for "just and fair" compensation, more so, in a prescribed formula based on the statutory provisions of law. In the case on hand, the Commissioner has not properly awarded the compensation as per the statute. Hence, the compensation awarded by the Commissioner is modified as above.

16. Accordingly, the appeal is dismissed and the quantum of compensation awarded by the Commissioner for Workmen's Compensation is modified as indicated above.

17. The interest @ 12% per annum as awarded by the



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Commissioner is confirmed, and the interest shall be calculated from the date of filing of claim petition till the date of deposit of the compensation now awarded by this Court.

18. The appellant/Insurance Company is directed to deposit the entire enhanced compensation amount to the credit of W.C.No.61 of 2017 before the Commissioner for Workmen's Compensation with interest @ 12% per annum from the date of accident till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount already if any deposited.

19. With the above directions/modification in the amount of compensation awarded by the Commissioner for Workmen's compensation, the appeal is dismissed, without costs. The miscellaneous petitions are closed.

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Index: Yes/no

Speaking Order: Yes/no

Neutral Citation case: Yes/no

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To

1. Commissioner for Workmen's Compensation
(Joint Commissioner of Labour), Salem.
2. The Section Officer, V.R.Section, High Court, Madras.

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