



C.M.A(MD)No.1571 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2022

Pronounced on : 02.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1571 of 2008

National Insurance Company Ltd.,
represented through its Manager,
No.31D, Chetty Street,
Thiruchengodu.

...Appellant/ 2nd Respondent

Vs

1.P.Palaniammal

2.K.Periasami

3.P.Rathinakumar

... Respondents 1 to 3/Petitioners

4.S.Kalai Selvi

... 4th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act to set aside the award dated 12.10.2007 made in W.C.No.53 of 2005 on the file of the Deputy Commissioner of Labour, Dindigul.

For Appellant : Ms.P.Malini

For R1 to R3 : Mr.K.Suresh Kumar

For R4 : Mr.R.Alagumani



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in W.C.No. 53 of 2005 on the file of the Deputy Commissioner of Labour, Dindigul. The appellant is the second respondent, respondents 1 to 3 are the claimants, fourth respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follow:

The deceased Prabhu was working as a technician in a rig unit bearing registration number TN 28-9576 that belong to the first respondent. On 01.09.2004, at about 11 p.m., the rig was engaged in digging borewell in a house that belong to T.G.Gopalan and when the work was on process, the compound wall of the house fell upon the deceased and he sustained injuries. He was taken to the Government Hospital. There he was reported dead. The deceased was aged about 25 years and was getting a salary of Rs.4500/- per month. The claimants are his dependants and they claim a sum of Rs.5,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent is as follows:

The petitioner has to prove that the vehicle was insured with the second respondent and that the insurance policy was effective. The petitioner has to prove that they are the legal representatives of the deceased. The petitioner has to prove that the deceased was an employee of the first respondent. The occurrence did not happen when the vehicle was in use. The occurrence took place in a private place. The age, income and profession of the deceased are all denied. The accident was not in the course of employment.

4. One witness was examined and five documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The Labour Commissioner, awarded a sum of Rs.3,85,323/- as compensation to be paid by the second respondent.

5. Against the order, the appellant filed this appeal on the following grounds:

The Deputy Commissioner of Labour gave a wrong finding that the deceased was an employee of the fourth respondent. The Labour



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Commissioner failed to appreciate that the respondents 1 to 3 failed to examine any independent witness and failed to mark any document to prove that the deceased was an employee of the fourth respondent. The Labour Commissioner failed to consider that the fourth respondent did not file any counter and did not produce any evidence. When the fourth respondent is not liable to pay compensation, the Labour Commissioner is wrong in fixing the liability on the insurance company. The Tribunal failed to consider that the accident did not happen due to the use of the vehicle.

6.This Civil Miscellaneous Appeal is admitted on the following substantial questions of law:

1.Whether the Appellant can be held liable in the absence of policy covering the risk of employee of the rig unit?

7.On the side of the appellant, it is stated that the accident did not take place when the vehicle was in use. The accident took place in a private place and not in a public place and hence there is no coverage. The policy is only for the vehicle and not for the rig unit. No additional premium was paid for the rig.



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8.On the side of the appellant, it is stated that only when the vehicle was used in a public place, the insurance company may be held liable otherwise the insurance company is not liable. A judgment of the Hon'ble Supreme Court reported in **2010 (10) SCC 536** in the case of **Mamtaj Bi Bapusab Nadaf and others vs United India Insurance Co. and others**, is cited.

9.On the side of the appellant a judgment of this Court made in **CMA(MD)No.877 of 2016** is cited, wherein it is held as follows:

"6.Admittedly, the accident occurred when the rig unit was being used for drilling operation. It was stationary at that time. The deceased workman was carrying an iron rod. The accident did not occur on account of the use of the motor vehicle. Therefore, the Commissioner for Workmen Compensation clearly erred in fastening liability on the insurer."

10.On the side of the appellant, it is stated that the insurance company may be held liable, only when the accident has happened while the vehicle was moving. A judgment of this Court made in C.M.A(MD)No.3263 of 2017 dated 28.02.2020, is cited, wherein it is held as follows:



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"18. Therefore, in view of the above and being bound by the Judgment of Hon'ble Supreme Court reported in (2010) 10 Supreme Court Cases 536 [Mamtaj Bi Babusab Nadaf and others V. United India Insurance Company and others], this Court is of the opinion that the appellant / insurance company may be exonerated from paying the compensation to the claimants and accordingly, the appellant / insurance company is exonerated."

11.On the side of the respondents 1 to 3 / claimants it is stated that the insurance policy is a package policy. The vehicle is a driller lorry. Premium was paid even under the Workmen Compensation Act. The deceased died in the course of employment and the citation referred by the appellant are not applicable to the facts of the case.

12.On the side of the fourth respondent/ owner of the vehicle, it is stated that the deceased was an employee of the fourth respondent. The deceased died during the course of employment. Only due to the vibration from the rig unit, the compound wall has fallen down. The deceased was employed in digging the borewell at the time of accident. The insurance was in force and premium was paid for one Manager, two drillers, six helpers. The rig is not a road transport vehicle.



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13. On the side of the sixth respondent it is stated that a rig unit may be used both in a private or a public place. A judgment of this Court made in C.M.A(MD)No.25 of 2012 dated 29.08.2018 is cited, wherein this Court has held as follows:

"In other words, it is the specific contention that the vehicle in question was not in operation and due to the operation of the rig attached to the vehicle in question, the accident occurred and therefore they are not liable to pay compensation. Even though the said contention appears to be attractive, I am of the firm view that, the said contention is liable to be rejected on the reason that as already pointed out it is the cascading effect due to which the accident occurred. In other words, the accident had occurred when the rod was fallen while the lorry was in use. Therefore, the nexus between the use of the motor vehicle and the accident cannot be said to be remote. The connection between the use of the vehicle where the accident occurred and the activity of doing borewell provides the close link between the accident and the use of motor vehicle. As a result of the use of the lorry, the rod gave away and fell on the deceased and he succumbed to his injuries. All the more, when the policy is analysed, it is not found mentioned anywhere that the vehicle is not covered under insurance when it is used as a rig employed in stationary position. When there is no such



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specific exclusion clause available under IMT 47, the appellant insurance company cannot take recourse under that."

14. Another judgment of this Court made in C.M.A(MD)No.1036 of 2019 dated 17.07.1992 is cited, wherein it is held that,

"16. The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public place', wherever used as a right or controlled in any manner whatsoever, would attract section 2(24) of the act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.

15. On the side of the respondent a judgment of this Court made in CMA(NPD)No.2620 of 2005 dated 05.01.2007, is cited, wherein it is held as follows:

"When the deceased was admittedly operating the Rig as a Rig operator under the insured and the risk is covered by the



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payment of extra premium the insurer is liable to indemnify the insured though the vehicle was not in use as a motor vehicle."

16.On the side of the appellant it is claimed that the policy has no coverage for the rig unit. The rig unit is not a transport vehicle. The lorry is used only for mounting the rig unit. The rig unit was fixed with the lorry. In the above circumstances, the contention of the appellant that there was no coverage for the rig unit is not sustainable.

17.On the side of the appellant it is stated that the deceased was not an employee of the fourth respondent and that the death was not during the course of employment.

18.Though the fourth respondent was set ex-parte before the Labour Commissioner, the fourth respondent was present before this Court and he has admitted that the deceased was his employee and that the accident was during the course of employment.

19.The contention of the appellant is that the fourth respondent can argue only a question of law and he cannot unveil any question of fact. This question raised by the appellant in this appeal, is only a mixed question of law



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and fact. The appellant is questioning the employer and employee relationship. The appellant has not chosen to examine any independent witness to prove that the deceased was not an employee as stated in the claim petition.

20.On the side of the appellant it is stated that the owner of the vehicle was not examined as an witness. The owner of the place in which the borewell was digged was also not examined. There was no document such as trip sheet or any other document to that effect, to prove that the deceased was an employee of the fourth respondent. A judgment of the Hon'ble Supreme Court reported in **2007 ACJ 1025** in the case of **Gottumukkala Appalal Narasimha Raju and others Vs National Insurance Co.Ltd., and another,** is cited, wherein the Hon'ble Supreme Court dismissed the petition for want of proof of employment.

21.The above judgment is relating to a claim where a husband was mentioned as a workmen under his wife and the Court held that the claim is not bonafide. The fact of the case referred by the appellant, is different from the facts of this case and this citation is not applicable to the present case.



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22. Another judgment of this Court reported in **2009(1) TN MAC 146** in the case of **Bhaskar Vs. G.Selvaraj**, is cited on the side of the appellant., wherein it is held that,

"If a finding of fact is based on no evidence or based on inadmissible evidence or on basis of evidence, no reasonable person would have arrived such conclusion, then such finding, though a finding of fact, shall be elevated to level of a substantial question of law - Commissioner giving finding on question of fact that deceased was under employment of Appellant - No oral evidence or document to show that deceased was employed under Appellant and was in receipt of wages."

23. Another judgment reported in **2009 (3) TN MAC 284** in the case of **J.Rajasulochana alias Jothi and another Vs Mehapoop Bai Rice Mill, Villupuram District**, is cited, wherein it is held that,

"Production of additional evidence in appeal - Appellants not assigned any valid reason for not producing relevant document during course of enquiry before Commissioner - No case made out under Order XLI, Rule 27 for reception of additional evidence."



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24. In this case, P.W.1, has deposed that the deceased was working under the fourth respondent. At the stage of appeal, the fourth respondent also admitted that the deceased was his employee. In the above circumstances, the cases cited by the appellant are not applicable to the fact of the present case. Even in the policy itself, it was mentioned that the lorry was attached with the rig unit. The equipment was mounted on the lorry and the lorry was used only as a platform. The lorry was not used for carrying passenger or any other goods. In the above circumstances, the need for separate insurance for the rig unit, is not sustainable. The rig unit form part and parcel of the lorry. If the appellant treats the rig unit as a lorry, there may not be a possibility of receiving premium for a Manager and for two drillers and for six helpers. Once premium was received for all these people, the insurance company has to take the responsibility for all these persons and hence it is decided that the insurance company has received premium for the entire unit ie., the lorry mounted with the rig unit.

25. On the side of the appellant it is stated that the deceased sustained injuries not on the usage of the vehicle. The accident has happened when the



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rig unit was in use. Only due to the vibration, the compound wall has fallen.

The deceased was engaged in digging the borewell at the time of accident by using the rig unit. A rig unit is not a transport vehicle and the appellant cannot claim that it should be used only in a public place. The rig equipment mounted on the lorry, cannot be considered as just a motor vehicle.

26.On the basis of the oral evidence of P.W.1, the Labour Commissioner has come to a conclusion that the deceased was an employee of the fourth respondent. There was no rebuttal evidence on the side of the respondent. Moreover, the fourth respondent has admitted that the deceased was his employee, the wall cracked down when the rig unit was in operation and when the employee was engaged in digging the borewell. Hence, it is decided that the accident took place during the course of employment and that the question raised by the appellant is not sustainable.

27.For the reasons stated above it is decided that there is nothing sufficient enough to interfere with the orders of the Labour Commissioner and this Civil Miscellaneous Appeal is liable to be dismissed.



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28. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.3,85,323/- (Rupees Three Lakhs Eighty Five Thousand Three Hundred and Twenty Three only).

(ii) The Appellant / Insurance Company is directed to deposit the entire compensation of Rs.3,85,323/- (if not already deposited) to the credit of in W.C.No.53 of 2005 on the file of the Deputy Commissioner of Labour, Dindigul, within a period of 30 days from the date of receipt of a copy of this order, failing which, the appellant / insurance company shall deposit the compensation amount with an interest at the rate of 12% per annum from the date of accident till the date of deposit.

(iii) On such deposit being made by the appellant / Insurance company, the first and second respondents herein/1 and 2 claimants are permitted to withdraw their share of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only)**each** with proportionate interest and cost. The third respondent herein /



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3rd claimant is permitted to withdraw his share of Rs.85,323/- (Rupees Eighty Five Thousand Three Hundred and Twenty Three only) with proportionate interest and cost by filing appropriate petition before the Labour Commissioner.

02.01.2023

Index: Yes / No
Internet : Yes / No

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To

- 1.The Deputy Commissioner of Labour, Dindigul.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI, J

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Pre-delivery Judgment made in
C.M.A(MD)No.1571 of 2008

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