



C.M.A(MD)No.2071 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.2071 of 2013

and

M.P(MD)No.1 of 2013

The Manager,
United India Insurance Company Ltd.,
K.P.V.Complex, I Floor,
137-B & E, Pandalgudi Road,
Aruppukottai-626 101.

... Appellant/2nd Respondent

Vs.

- | | |
|-------------------|---|
| 1.Pandi | ... Respondent/1 st Petitioner |
| 2.Guruvammal | ... Respondent/2 nd Petitioner |
| 3.Minor.Madhubala | ... Respondent/3 rd Petitioner |
| 4.Minor.Pavithra | ... Respondent/4 th Petitioner |

(Minor respondents 3 & 4 represented by their grand father & next friend R1 herein)

- 5.M/s.Karthikeya Agency,
6 & 7, St.Peters Church Road,
Iyer Bangalow, Thiruppalai,
Madurai-14.

... Respondent/1st Respondent

- 6.The Manager,
Tamil Nadu State Transport Corporation,
Madurai Division,
Bye-pass Road, Madurai.

... Respondent/3rd Respondent



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PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, against the order, dated 22.07.2013 in W.C.No.72 of 2009 on the file of the Commissioner for Workmen Compensation, Madurai.

For Appellant : Mr.I.Robert Chandrakumar

For R1 & R2 : Mr.S.Sukumar

For R5 & R6 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the order passed by the Commissioner for Workmen Compensation, Madurai in W.C.No.72 of 2009 primarily on the ground of liability.

2. According to the claimants, the deceased was a delivery man working in the 1st respondent gas agency. While he was riding a two wheeler on 20.01.2003 to attend a leakage call at Alanganallur, the bus belonging to the 3rd respondent transport corporation came in a rash and negligent manner and dashed against the two wheeler. In the said accident, the deceased sustained serious injuries and he died on the spot.



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3. The claimants have further contended that the 1st respondent who is the employer has taken LPG dealers package insurance policy and the deceased had died in the course of his employment and therefore, the 2nd respondent insurance company is liable to pay the compensation. The claimants have prayed for a sum of Rs.4,00,000/- towards the compensation.

4. The employer, namely the gas agency had remained ex parte and the insurer had filed a counter contending that the claim has arisen out of a road accident and not in the course of employment and therefore, they are not liable to pay any compensation. They have further contended that as per the claim petition, the driver of the transport corporation has driven the vehicle in a rash and negligent manner and therefore, a claim petition ought to have been filed before the Motor Accident Claims Tribunal and the same is not maintainable under the Workmen's Compensation Act.

5. The Commissioner after hearing both the parties, arrived at a conclusion that the deceased was employed in the 1st respondent gas agency and he died in an accident during the course of his employment as a delivery man. The Commissioner has also calculated the compensation at Rs.2,31,278/-. This award is under challenge in the



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present appeal.

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6. The appeal has been filed raising the following substantial questions of law:

(i) Whether the deceased was a workman and that the accident arose in the course of and during the course of employment?

(ii) Whether attending gas leakage is part of the duties of the deceased and whether such act of the deceased be considered as arising out of the course of his employment?

7. The learned counsel appearing for the appellant had contended that throughout the claim petition, the claimants have specifically contended that the accident has taken place only due to the rash and negligent driving on the part of the driver of the transport corporation. Therefore, the claim petition ought to have been filed only before the Motor Accident Claims Tribunal and not under the Workmen's Compensation Act. He further contended that the deceased was a delivery man and his duty hours come to an end by 6.00 p.m. That apart, he is not expected to attend the leakage complaint. Therefore, it is highly doubtful whether the deceased was in course of his employment when he met with an accident at about 8.45 p.m on 20.01.2003. When it is not a part of the duty of a delivery man to attend a leakage call, it cannot be



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employment. When the accident has not happened in the course of the employment and that too in an area, which is not falling within the jurisdiction of the 1st respondent employer, the Commissioner under the Workmen's Compensation Act will not have any jurisdiction to entertain such a claim petition. Hence, he prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the respondent had contended that just because employee had worked beyond the working hours, he will not cease to be an employee. That apart, it is the specific case of the claimants that the delivery man was travelling towards Alanganallur to attend a leakage call. As far as the leakage call is concerned, it is an emergency call and it is being attended to by the delivery man also when it is made during odd hours. Therefore, the said technical objection raised by the insurance company is not legally sustainable. Hence, he prayed for sustaining the order passed by the Commissioner.

9. I have carefully considered the submissions made on either side.

10. The main contention on the part of the learned counsel appearing for the insurance company is that the delivery man is said to have travelled up to Alanganallur to attend a leakage call after his duty



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hours. The claimants or the employer have not established the fact that the deceased was in fact travelling to Alanganallur to attend to a leakage call. A perusal of Exhibit P.3 would clearly establish that a claim form has been submitted by the 1st respondent employer to the insurance company admitting that the deceased is a delivery man and he has died in the course of his employment. However, for reasons best known, the insurance company has not processed the said claim form which has resulted in the filing of the present application. Therefore, there cannot be any dispute about the employer-employee relationship or the fact that the deceased had died during the course of his employment.

11. As far as the quantum is concerned, the Commissioner has strictly adhered to the statutory principles and has awarded a sum of Rs.2,31,278/-. In view of the above said deliberations, the substantial questions of law are answered as against the appellant and the Civil Miscellaneous Appeal stands dismissed. The claimants are permitted to withdraw the amount from the Commissioner, Workmen's Compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

<https://www.mhc.tn.gov.in/> : Yes / No
Index : Yes / No



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To

- 1.The Commissioner,
Workmen Compensation,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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