



C.M.A.(MD).No.849 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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1.Kavitha
2.Hariskumar(Minor)
3.Nivasini (Minor)
4.Panjavarnam ... Appellants

Vs.

1.Kuppusamy
2.The Branch Manager,
United India Insurance Company Limited,
No.146/N, Kumar Complex 2nd Floor,
Annasalai,
Tiruchengode Taluk,
Namakkal District. ... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of Workmen Compensation Act, against the dismissal order passed in E.C.No.84 of 2016 on the file of the Workmen's Compensation Commissioner Tribunal, Dindigul dated 16.10.2019.

For Appellant	: Mr.R.Mohanasundaram
For R1	: Mr.M.K.Suresh
For R2	: Mr.I.Suthakaran



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Challenging the order of dismissal in E.C.No.84 of 2016 on the file of the Workmen's Compensation Commissioner Tribunal, Dindigul, dated 16.10.2019, the present appeal came to be filed.

2. The brief facts leading to the filing of this appeal are as follows:

The deceased Sukumaran, aged about 45 years, was driver by profession. He was engaged as a driver to the lorry bearing Registration No.KA-51-C-7245 by the first respondent. On 27.05.2016, the lorry left Kerala with load of tyres and after unloading the same at Echapuram, Andra Pradesh, on 30.05.2016 and returning from Kerala, the deceased was sitting in the lorry and another driver Karupusamy was driving the lorry. At that time, at about 3.15 a.m., on 31.05.2016, the deceased suffered heart attack and immediately the driver Karupusamy took the deceased to the hospital. However, the Doctor declared him dead. Therefore, the petitioners filed the claim petition before the Workmen Compensation Commissioner/Tribunal, Dindigul. The first respondent remained ex-parte. The second respondent / Insurance Company has denied the allegation made by the claim petitioners that the deceased died in the course of employment.



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3. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and Exs.A1 to A10 were marked and on the side of the respondents, R.W.1 was examined.

4. Based on the evidence, the Tribunal has dismissed the claim petition on the ground that there was no F.I.R. filed and further Ex.A1 did not contain the signature of the Inspector and come to the conclusion that the employer and employee relationship is not established.

5. The learned counsel appearing for the appellants would submit that the Tribunal has not considered the evidence and in fact, Exs.A1 and A2 clearly proved the death of the deceased in Andhra Pradesh. There was no necessity for the deceased to go to Andhra Pradesh. This fact itself clearly proved that he died while in the course of employment. The Tribunal has not considered this aspect. Hence, he would submit that the petitioners are entitled to compensation.

6. The learned counsel appearing for the respondents would submit that though the death of the deceased has been established, there is no evidence to prove the employer and employee relationship between the deceased and the first respondent.



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7. In the light of the above submissions, now the points for consideration in this appeal are (i) whether the the Tribunal is right in dismissing the application, despite Exs.A1 and A2 filed to prove the death of the deceased (ii) whether there was an employer and employee relationship between the deceased and the first respondent.

8. The wife of the deceased in her evidence clearly stated that her husband left Andra Pradesh as a driver of the lorry belonging to the first respondent and in fact, her husband also called her and spoke her over phone stating that he was in Andra Pradesh and thereafter, she was also informed by the first respondent that her husband died in heart attack. Thereafter, her brother and other relatives rushed to Andra Pradesh and brought the body. P.W.1 in her evidence also stated that her husband called from Andra Pradesh and he went as driver. The certificate issued by the Station House Officer of Payakarapeta Police Station, Visahapatnam District makes it clear that the deceased was the driver of the lorry bearing Registration No.KA-51-C-7245 and died on 31.05.2016 at 3.15 a.m., only due to heart attack. Since it was a natural death, no case was registered in the police station and the certificate has been issued only for transportation of the dead body from Tuni to native place.



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9. It is relevant to note that the certificate has been issued on 31.05.2016 by the Station House Officer viz., the jurisdictional police station. The same makes it very clear that the deceased died in heart attack, while he was working as a driver. Though the author of the certificate has not been examined, the fact remains that the strict Rules of Evidence Act cannot be applied this type of cases. It is relevant to note that the certificate was issued on 31.05.2016 ie., on the date of death of the deceased and there was no necessity for the Station House Officer to give such certificate, if the deceased wa not died within his jurisdiction. That apart, the Medical Officer has also made an entry in the hospital records to the effect that he was brought dead on 31.05.2016 at 3.15 p.m. and the death certificate issued under the Registration of Birth and Deaths Act, 1969 and Rules 8/13 of the Andra Pradesh Registration of Births and Deaths Rules, 1999 makes it clear that the deceased died in heart attack on 31.05.2016 and the body was brought to the native District Dindigul, where it is has been cremated. The certificate issued by Otanchatram Municipality which was marked as Ex.A4 also proved the fact that the deceased died during the course of employment under the first respondent. The first respondent has not denied the claim made by the petitioners and remained exparte. The Tribunal has rejected the certificate issued by the Station House Officer on the ground



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that there was no designation mentioned in the certificate. This Court is of the view that merely the seal is not found in the said certificate it cannot be concluded that the certificate was not valid.

10. In such a view of the matter, this Court is of the view that the dismissal of the claim petition by the Tribunal is not proper. Hence, the same is liable to be set aside. At the time of death, the deceased was aged about 45 years and driver by profession and the same has been established by the claimants. Therefore, as per the Workman Compensation Act, the income of the deceased is fixed as Rs.11,060/- and the proper factor for the death of the deceased, aged about 45 years is Rs.169.44/- and after deducting 50%, the award amount comes to Rs.9,37,003.02/- (Rs.11,060/- x Rs.169.44/- = Rs. 18,74,006.4/- - 50%) and added Rs.5,000/- for funeral expenses and the total award amount comes to Rs.9,42,003.2/-. Accordingly, the second respondent / Insurance Company is directed to deposit the entire award amount with 12% interest within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same.



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11. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

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To

The Workmen's Compensation Commissioner Tribunal,
Dindigul.



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N.SATHISH KUMAR,J.

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