



C.M.A(MD)No.322 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 19.07.2022

Pronounced On : 14.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.322 of 2020

and

C.M.P.(MD)Nos.4198 and 4416 of 2021

The Branch Manager,
M/s.United India Insurance Company Limited,
Door No.443, Periyakulam Road,
Theni Town, Theni District. : Appellant / 4th Respondent

Vs.

1.Thilagavathi : 1st Respondent/1st Petitioner

2.Minor.Muthukumaran : 2nd Respondent/2nd Petitioner

3.Minor.Vishnu : 3rd Respondent/3rd Petitioner

(Minor 2nd and 3rd respondents are
represented by their mother and natural
guardian/1st respondent)

4.Vasuki : 4th Respondent/1st Respondent

5.Rajagopal : 5th Respondent/2nd Respondent

6.Elango : 6th Respondent/3rd Respondent



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PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, challenging the award, dated 30.12.2019 in W.C.No.108 of 2013 on the file of the Workmen Compensation Commissioner Tribunal/Deputy Commissioner of Labour, Dindigul.

For Appellant : Mr.I.Suthakaran

For Respondents : Mr.M.Ramu, for R1 to R3.

: Mr.C.Jeganathan, for R4 to R6.

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act, challenging the award, dated 30.12.2019 made in W.C.No.108 of 2013 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.7,29,429/- with interest at 12% per annum to the respondents 1 to 3/claimants 1 to 3 for the death of one Murugan, consequent to an occurrence held on 23.08.2012, challenged the liability mulcted on it.

3. Admittedly, the first respondent/first claimant is the wife and the respondents 2 and 3/claimants 2 and 3 are the sons of the deceased Murugan.



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4. The case of the claimants is that the deceased was working as a Fitter in the bus owned by Barathi Vidhya Mandhir Hr.Sec.School, Theni; that the fourth respondent/first respondent is the correspondent; the fifth respondent/second respondent is the Principal and the sixth respondent/third respondent is the Manager of the said School; that the deceased as usual along with co-workers has worked as a Fitter to the bus in the school campus; that the other staffs after completing their noon meals have come to know that the deceased Murugan was not available and on search, they have found the dead body of the said Murugan with injuries all over his body; that immediately, the sixth respondent had directed the co-workers to take the said Murugan to the Hospital; that after examination, they have informed that he was already dead; that a case came to be registered in Crime No.383 of 2012 on the file of the P.C.Patty Police Station and that the accident was occurred during and in the course of employment as Fitter and therefore, the respondents 4 to 6 are liable for compensation.

5. It is their further case that the deceased was aged 26 years at the time of occurrence; that he was earning Rs.7,500/- per month including



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batta and that therefore, they are entitled to get compensation at Rs.15 lakhs from the respondents 4 to 6/respondents 1 to 3.

6. For the sake of convenience and brevity, the parties herein after will be referred as per their ranking/status before the trial Court.

7. The defence of the respondents 1 to 3 is that the deceased Murugan had never worked as a Fitter to the School bus of the respondents 1 to 3; that the school management had entered into a contract with one Ganavel to attend the repairs of the buses owned by the school; that the said Ganavel used to engage the deceased Murugan and some others for the said purpose; that there was no relationship of employer and employee between the first respondent's school and the deceased Murugan; that since the deceased Murugan was working under the said Ganavel, he is a necessary party; that on 23.08.2012 afternoon they have found that the deceased was lying under the bus bearing Reg.No.TN-69-V-1953 in an unconscious stage; that he was immediately taken to the hospital and the hospital authorities have informed that he was already dead; that the death of the said Murugan is a natural death and that therefore, the respondents 1 to 3 are not liable for the claim.



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8. It is the further defence of the respondents 1 to 3 that they have insured their bus bearing Reg.No.TN-69-V-1953 with the fourth respondent/Insurance Company; that there was insurance coverage for the said bus from 03.06.2012 to 02.06.2013; that in case, the claimants are entitled to get compensation, they have to implead the insurer and the Contractor Ganavel and that therefore, the petition is liable to be dismissed as against the respondents 1 to 3.

9. It is seen from the records that the claimants have then filed an application to implead the insurer and as per order passed in I.A.No.17 of 2016, the insurer was impleaded as fourth respondent in the above claim petition.

10. The defence of the fourth respondent is that the said Murugan was found in dead condition at about 02.00 pm in the school campus; that no accident had occurred in the school campus, that the insurer was impleaded at the instigation of the respondents 1 to 3 and that the insurer is not liable to pay any compensation to the claimants.



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11. During enquiry, the claimants have examined the first claimant as P.W.1 and exhibited 6 documents as Ex.P.1 to Ex.P.6. The respondents 1 to 3 have adduced neither oral nor documentary evidence. The fourth respondent/insurer has examined its Assistant Legal Officer, namely, Tmt.Vijayalakshmi as R.W.1 and exhibited 2 documents as Ex.R.1 and Ex.R.2.

12.The learned Commissioner, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the impugned order on 30.12.2019, holding that there existed relationship of employer and employee between the deceased Murugan and the first respondent's school; that the said Murugan had died during the employment as a Fitter to the bus bearing Reg.No.TN-69-V-1953 and that since the said bus was insured with the fourth respondent, the fourth respondent was directed to pay compensation of Rs.7,29,429/- with interest at 12 % per annum from the date of accident till the disbursement. Aggrieved by the said award, the Appellant/insurer has come forward with the present appeal.



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13. Substantial questions of law :

(i) Whether the learned Commissioner of Workmen Compensation erred in rendering a finding that there existed relationship of employer and employee between the deceased Murugan and the first respondent's school and that the said Murugan had died during his employment as a Fitter to the bus bearing Reg.No.TN-69-V-1953 owned by the first respondent's school, despite showing that the claimants have failed to prove that the deceased Murugan was working under the first respondent's school and that the accident had occurred involving a bus bearing Reg.No.TN-69-V-1953, which resulted in the death of said Murugan ?

(ii) Whether the impugned award passed by the learned Commissioner is liable to be interfered with ?

14. It is the specific case of the claimants that the deceased Murugan was working as Fitter to the bus bearing Reg.No.TN-69-V-1953 owned by the first respondent's school, which was insured with the fourth respondent. The specific defence of the respondents 1 to 3 and the insurer



is that there existed no relationship of employer and employee between the deceased Murugan and the first respondent's school and that no accident had occurred involving the bus bearing Reg.No.TN-69-V-1953 in the school campus on that day.

15. The claimants, in order to prove their case, have examined the first claimant as P.W.1 and in chief examination affidavit she would reiterate the contentions raised in the claim petition. During cross examination made on behalf of the respondents 1 to 3, she would say that her husband was working as a bus Fitter under the respondents 1 to 3. Admittedly, the claimants have not produced any iota of materials to show that the deceased Murugan was working as Fitter in the first respondent's school.

16. The respondents 1 to 3 have taken a stand that they had entered into a contract with one Ganavel to attend the repairs of buses owned by the first respondent's school and he used to engage the workers Murugan and others for the said purpose. Though the respondents 1 to 3 have already taken a stand that the said Ganavel is a necessary party, the claimants have not chosen to implead the said Ganavel nor taken any



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steps to examine him before the Tribunal. Though P.W.1 in her cross examination would say that everything would come to light, if the said Ganavel is examined, but they have not offered any reason or explanation for non examining him.

17. As rightly pointed out by the learned counsel for the appellant, on the basis of the complaint lodged by one Kamajar father-in-law of P.W.1, F.I.R., came to be registered in Crime No.383 of 2012 under Section 174 Cr.P.C on 24.08.2012 and it is pertinent to note that the deceased Murugan has been shown as an accused. In FIR/ Ex.P.1, it has been stated that the said Murugan was found dead in the school campus.

18. As rightly pointed out by the learned counsel for the appellant, the claimants have nowhere whispered about any accident alleged to have occurred on that day involving the bus bearing Reg.No.TN-69-V-1953. Though the claimants had produced the postmortem certificate under Ex.P.2, no final opinion was offered as the same was reserved pending chemical examination report.



19. Admittedly, the claimants have not chosen to produce the final opinion given by the medical officer, who conducted the postmortem on the body of the deceased Murugan. No doubt, the bus bearing Reg.No.TN-69-V-1953 was insured with the fourth respondent, but since the claimants have neither pleaded nor proved any accident involving the bus bearing Reg.No.TN-69-V-1953, the question of mulcting liability on the insurer does not arise at all.

20. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Malikarjuna G Hiremath Vs. Branch Manager, Oriental Insurance Company Limited and another*** reported in ***(2009) 13 SCC 405***, relied on by the learned counsel for the appellant. In the above decision's case, the deceased who was driving the vehicle on the direction of the insured had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. The Commissioner of Workmen Compensation has allowed the claim petition and directed the insurer of the vehicle to pay compensation. In the appeal filed by the insurer, the Hon'ble High court by holding that there was no casual connection between the death and the employment of the workman and after exonerating the insurer, directed



the claimant to recover the amount from the insured. When that decision was challenged by the insured before the Hon'ble Supreme Court, the Hon'ble Supreme Court by holding that since there was no casual connection between the death and employment of the workman, mulcting liability on the insured/owner cannot also be sustained, allowed the appeal and the relevant passages are extracted hereunder :

“7. In support of the appeal, learned counsel for the appellant submitted that the death had not been occasioned during and in course of employment. It is also not in dispute that the vehicle was the subject of insurance and the risk of the driver was covered under the policy. The High Court accepted that the driver did not die as a result of an accident involving the vehicle. But the vehicle was taken by the deceased in the course of employment at the behest of the present appellant to the temple.

8. The ultimate question according to the High Court was when the driver was taking a bath at the pond and gone there, the death had occurred out of an accident arisen out of and in the course of his employment. The High Court noted that there was no casual connection between the accident causing the death and the vehicle. The High Court also noted that since there was no such casual connection, the insurer would not be liable in terms of the policy as the vehicle which was the subject matter of insurance was not involved in the accident and the insurer had no liability.



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9. *Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. After having held that there was no casual connection between the death and the employment of the workman and after exonerating the insurer, the High Court should not have directed claimant to recover the amount from the present appellant.*

13.....

33. *In Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mohd. Issak (1969 (2) SCC 607), this Court held:*

"5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such--to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident



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of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

The above position was again highlighted in Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr. (2007 (11) SCC 668).

14. It is the specific case of the claimants that on 30.11.2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. The High Court was not justified in holding that the present appellant was liable to pay compensation."

21. The above decision is squarely applicable to the case on hand. As already pointed out, since the claimants have miserably failed to prove the relationship of employer and employee between the first respondent's school and the deceased Murugan and also the accident involving the bus bearing Reg.No.TN-69-V-1953, the Tribunal without considering the above aspects in proper perspective, has recorded a mechanical finding that the deceased Murugan was working as a Fitter in



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the bus bearing Reg.No.TN-69-V-1953 and that he had died during the course of his employment. Hence, this Court has no hesitation to hold that the impugned award is legally unsustainable and the same is liable to be set aside. Accordingly, the substantial questions are answered in favour of the appellant. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

22. In the result, this Civil Miscellaneous Appeal is allowed and the order passed in W.C.No.108 of 2013, dated 30.12.2019, on the file of the Workmen Compensation Commissioner Tribunal/Deputy Commissioner of Labour, Dindigul, directing the Appellant /Insurer to pay compensation is set aside. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

14.08.2023

NCC : Yes/No
Index : Yes : No
Internet : Yes : No
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To

1.The Workmen Compensation Commissioner Tribunal/
Deputy Commissioner of Labour, Dindigul.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.322 of 2020
and
C.M.P.(MD)Nos.4198 and 4416 of 2021

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