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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1189 of 2021

1.Anuradha

2.Minor Nivetha

3.Minor Reethika

4.Minor Arthi

(Appellants 2 to 4, who are minors, are represented by their mother and guardian, the first appellant herein Anuradha)

:Appellants/Petitioners

.VS.

1.M.Mohammed Ismail

2.M/s.The New India Assurance Company Limited,
Branch Office,
85 P,Market Road,
Thanjavur.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation At, 1923 against the order made in W.C.No.210 of 2005, dated 6.9.2019, on the file of the Deputy Commissioner of Labour(Workmen Compensation), Trichy.

For Appellant

:Mr.G.Karnan

For Respondent-1

:No appearance



For Respondent-2 :Mrs.P.Malini

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JUDGMENT

Challenging the order made in made in W.C.No.210 of 2005, dated 6.9.2019, on the file of the Deputy Commissioner of Labour(Workmen Compensation), Trichy.

2.It is the case of the appellant that the deceased Iyyappan worked as Load-man with the first respondent and on 2.1.2005, when the said Iyyappan was working as load-man in the lorry of the first respondent bearing Registration No. TDY 2099 and after loading timbers in the said lorry and when he was about to travel in the said lorry, the timbers fell on him and succumbed to injuries and on the way to hospital for treatment, he died and the said lorry was insured with the second respondent. Hence the legal heirs of the said Iyyappan claimed compensation of Rs.10 lakhs and filed the claim petition.

3.The Insurer has not disputed the insurance coverage for the workman also. The Tribunal has fixed the compensation at Rs. 3,33,485/-, however, the apportioned the compensation between the first and second respondents and directed them to pay the said compensation at 50% each.



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4.It is the contention of the learned counsel for the appellants that admittedly, there is insurance coverage for the workmen which is not disputed by the second respondent/Insurance Company. Such being the position, directing the first respondent-owner of the lorry to pay the compensation at 50% is not sustainable. Further the learned counsel for the second respondent Insurance company has not disputed the insurance coverage to the workman.

5.The point for consideration that arose for consideration in this appeal is as follows:

1.Whether the Tribunal is right in apportioning the compensation between the owner of the vehicle and the Insurance Company?

6.Admittedly, the insurance coverage to the workman is not disputed. Though it is an act policy, it has the coverage of workman also. From the records, it could be seen that the accident is not disputed and the deceased died during and in the course of employment under the first respondent's lorry, which is also insured with the second respondent, which is not disputed by the Insurance Company.



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7. In such view of the matter directing the first respondent/owner of the lorry to pay the compensation is not in order and hence the order of the Deputy Commissioner of Labour (Workmen Compensation), Trichy directing the the first and second respondents to pay the compensation at 50% each alone is set aside and the second respondent Insurance Company is directed to pay the entire award amount with interest at the rate of 12%p.a., from the date of claim petition till the date of realization.

8. With the above modification, the Civil Miscellaneous Appeal is allowed. It is stated that the second respondent Insurance Company has already deposited 50% of the award amount before the Tribunal. In such view of the matter, the second respondent is directed to deposit the remaining award amount within a period of one month from the date of receipt of a copy of this order. No costs.

13.04.2023

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

1. The Deputy Commissioner of Labour
(Workmen Compensation),
Trichy.



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

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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.MA(MD)No.1189 of 2021

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