BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.11.2022

Pronounced on : 09.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.962 of 2021
and C.M.P.(MD)No.9115 of 2021

Branch Manager,
The New India Assurance Company Ltd.,
Karaikudi. ...Appellant/
3rd Respondent

Vs.

1.Ponnalagu

2.Minor S.Ayyankalai

3.Minor Ayyammal

4.Minor Muthalagu

5.Minor Malarkodi ...Respondents 1 to 5/
Petitioners

6.A.Murugan ...6th Respondent/
1st Respondent

7.Branch Manager,
The National Insurance Company Ltd.,
Chekkalai Road, Karaikudi. ...7th Respondent/
2nd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of Employees Compensation Act, to modify the Decree dated 07.05.2021 in E.C.No.132 of 2009 on the file of the Deputy Commissioner of Labour, Madurai.

For Appellant	: Mr.A.Ilango
For R1 to R5	: M/s.K.R.Shivashankari
For R6	: No appearance
For R7	: M/s.P.Malini

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed in E.C.No.132 of 2009 dated 07.05.2021 on the file of the Deputy Commissioner of Labour, Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.3,28,619/- with interest at 12% per annum from the date of accident to the respondents 1 to 5/claimants for the death of one Subban, who died consequent to an accident occurred on 13.01.2004, challenged the liability mulcted on it and more particularly, the interest liability.

3. The case of the respondents 1 to 5/claimants is that on 13.01.2004 at about 13.00 hrs, while the deceased Subban was working as a load man for Murugan Chamber's lorry for loading sand in a lorry bearing Registration No.TN-67-A-0117 in Thiruppachethi Kanmai, the said Subban met with an accident and sustained grievous injuries, that he was immediately taken to the Government Hospital, Manamadurai, but, succumbed to the injuries, that when the accident was occurred, the deceased Subban was under the regular course of his employment and that FIR came to be registered in Crime No.11 of 2004 on the file of Thiruppachethi Police Station.

4. It is further case of the respondents 1 to 5/claimants that the deceased Subban was aged 30 years at the time of accident, that he was getting Rs.3,500/- per month and Rs.100/- as daily batta and that the respondents 1 to 5/claimants being the wife and children of the deceased Subban have laid the above claim petition seeking compensation.

5. The defence of the appellant/Insurer is that the deceased Subban was a third party and there was no relationship of employer and employee between the said Subban and the sixth respondent/first respondent, that the deceased Subban

was only doing coolie work in the accident place, that while the deceased Subban was collecting sand from the pit and at that time, the surroundings of pit suddenly collapsed and fell down on the deceased Subban, that the deceased Subban is not a load man attached to the vehicle, that since the employer himself is denying the employment of the deceased person, the question of seeking compensation from the appellant/Insurer does not arise at all and that therefore the appeal is liable to be dismissed.

6. During enquiry, the first respondent/first claimant has examined herself as P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7. The respondents 6 and 7/respondents 1 and 2 have adduced neither oral nor documentary evidence. The appellant/Insurer has examined 2 witnesses as R.W.1 and R.W.2 and exhibited 3 documents as Ex.R.1 to Ex.R.3.

7. The Deputy Commissioner of Labour, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned award dated 07.05.2021 directing the appellant/Insurer to pay compensation of Rs.3,28,619/- with interest at 12% per annum from the date of accident. Aggrieved by the said impugned award, the Insurer has come forward with the present appeal.

8. As rightly pointed out, the appellant/Insurer has challenged the impugned award with respect to the interest liability mulcted on it.

9. The learned counsel appearing for the appellant/Insurer would contend that the claim petition was filed in the year 2004 against the sixth respondent/ first respondent, owner of the vehicle, that the claim petition was subsequently dismissed for default on 17.11.2005 and thereafter the suit was restored to file in the year 2009, that the respondents 1 to 5/claimants have filed impleading and amendment petitions in the year 2012 and after 8 years since the filing of the claim petition and the appellant/Insurer was impleaded as third respondent in the claim petition, that the appellant/Insurer would not have been held liable to pay interest for a period of 17 years, that the case was disposed in the year 2021 for the accident occurred on 13.01.2004, that the appellant/Insurer, only after receiving the notice from the Deputy Commissioner of Labour, Madurai on 23.02.2012, have appointed an investigator and came to know about the accident and that the appellant/Insurer is liable to pay interest not from the date of accident, but from the date on which notice was served on him.

10. The substantial questions of law are as follows:-

(i) Whether the Deputy Commissioner of Labour, Madurai has erred in mulcting interest liability on the appellant/Insurer from the date of accident, despite showing that the appellant/Insurer was impleaded in the year 2012 and came to know about the accident on 23.02.2012, the date on which notice was received from the Deputy Commissioner of Labour, Madurai?

(ii) Whether the Deputy Commissioner of Labour, Madurai has erred in awarding interest for the entire period from the date of accident, despite showing that the claim petition itself was dismissed for default on 17.11.2005 and the same was restored in the year 2009?

(iii) Whether the appellant/Insurer is liable to pay interest from the date of accident and for the default period?

Point Nos.(i), (ii) and (iii) :-

11. Admittedly, the respondents 1 to 5/claimants being the wife and children of the deceased Subban have laid the claim application seeking compensation on 05.02.2004 against one A.Murugan, who is the owner of the vehicle bearing Registration No.TN-67-A-0117 allegedly involved in the accident.

12. It is evident from the records that subsequently, the respondents 1 to 5/claimants have filed an impleading application to implead the National Insurance Company, that thereafter in the year 2012, the respondents 1 to 5/ claimants have filed a petition for the impleadment of the appellant/Insurer and that the said impleadment petition was allowed and consequently, the same was ordered to be amended. It is further evident that thereafter notice was sent to the appellant/Insurer and in pursuance of the same, the appellant/Insurer has entered into appearance before the Deputy Commissioner of Labour.

13. As already pointed out, the appellant/Insurer was not made as a party-respondent in the claim petition originally and only in the year 2012, the appellant/Insurer was added as third respondent.

14. It is pertinent to note that the sixth respondent/first respondent, owner of the vehicle in his evidence before the Deputy Commissioner of Labour would admit specifically that they have not informed about the accident to the appellant/Insurer.

15. It is not the case of the respondents 1 to 5/claimants or the owner of the vehicle that they have informed about the accident to the appellant/Insurer. According to the appellant/Insurer, they came to know about the accident and

the consequent filing of the claim petition, only after the receipt of notice from the Deputy Commissioner of Labour, Madurai dated 23.02.2012.

16. As already pointed out, the Deputy Commissioner of Labour has directed the appellant/Insurer to pay the compensation with interest at 12% per annum from the date of accident.

17. As rightly contended by the learned counsel appearing for the appellant/Insurer that since the appellant/Insurer was not made a party respondent in the original claim petition and that the Insurer was made a party only in the year 2012, the question of paying interest by the appellant/Insurer from the date of accident does not arise at all.

18. In ***Ajaya Kumar Das and another Vs. Divisional Manager, National Insurance Company Limited, Orissa and another*** reported in ***2022 (1) TN MAC 363 (SC),*** the Hon'ble Apex Court has specifically reiterated the legal position that interest shall be paid on the compensation awarded from the date of the accident and not the date of adjudication of the claim.

19. As rightly contended by the learned counsel appearing for the appellant/Insurer, there is no evidence to show that information was provided either by the owner or by the respondents 1 to 5/claimants to the appellant/ Insurer and in the absence thereof, liability could not be ascertained.

20. It is not in dispute that the claim petition was dismissed for default on 17.11.2005 and at the petition filed by the respondents 1 to 5/claimants, the claim petition was restored only in the year 2009.

21. The learned counsel appearing for the appellant/Insurer has relied on the decision of this Court in ***Iffco Tokio General Insurance Co. Ltd., Vs. Micheal Britto and another*** reported in ***2019 (2) TN MAC 520,*** wherein, the claim petition before the Commissioner of Employees Compensation was dismissed for default on 12.11.2015 and the same was restored on 10.07.2018. When the Insurance Company has canvassed their grievances that there is a delay of 971 days in restoring the claim petition and the delay has been occurred, due to the attitude of the claimant in not proceeding with the claim application at the earliest and hence, the first respondent/petitioner therein is not entitled to get interest for the delay period of 971 days and this Court has

specifically observed that the direction to deposit the award amount with interest including the default period is not a fair and reasonable one and on that basis, the impugned award with regard to the amount of interest for the default period was ordered to be set aside. The above decision is squarely applicable to the case on hand also.

22. Considering the above, this Court has no hesitation to hold that the appellant/Insurer is not liable to pay interest from the date of accident and for the default period and is liable to pay interest only from the date on which the notice from the Deputy Commissioner of Labour was received by the appellant/Insurer.

23. As already pointed out, the claim petition was only filed against the original owner, sixth respondent herein/first respondent and since the sixth respondent/first respondent has specifically admitted that the information about the accident was not given to the appellant/Insurer, the sixth respondent/first respondent-owner is certainly liable to pay the interest from the date of accident till 22.02.2012.

24. Hence, this Court concludes that the interest liability fixed in the impugned award is liable to be set aside.

25. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order in E.C.No.132 of 2009 dated 07.05.2021 is set aside, in respect of the interest claim. The appellant/Insurer is directed to pay interest only from the date on which the notice from the Deputy Commissioner of Labour, Madurai was received by the appellant/Insurer i.e., on 23.02.2012 and the sixth respondent/first respondent is directed to pay interest from the date of accident i.e., 13.01.2004 till 22.02.2012 excluding the default period. Consequently, connected Miscellaneous Petition is closed.

09.03.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in

C.M.A.(MD)No.962 of 2021
and C.M.P.(MD)No.9115 of 2021

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