



C.M.A.(MD)No.946 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.946 of 2022

and

C.M.P.(MD)No.9361 of 2022

The Manager,
The Oriental Insurance Co. Ltd.,
Divisional Office,
107, Navaladian Complex, 2nd Floor,
Karur – 639 005.

... Appellant / 2nd Respondent

Vs.

1.R.Chitra

... 1st Respondent/ 1st Petitioner

2.Minor Balaji

... 2nd respondent/ 2nd petitioner

3.Vijayalakshmi

... 3rd respondent / 3rd petitioner

4.M.Vijayaraj

... 4th respondent / 4th petitioner

5.Priyadevi

... 5th respondent/ 1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order passed in E.C.No.106 of 2019, dated 05.07.2022 on the file of Commissioner for Employees' Compensation, Dindigul.



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For Appellant : Mr.E.Chandrasekaran
For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R4

JUDGMENT

Challenging the order passed by the Commissioner for Employee's Compensation, Dindigul, in E.C.No.106 of 2019, dated 05.07.2022, the appellant has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

The deceased Malayalam was working as a Cleaner in a Lorry bearing Registration No.TN-47-AA-6064, owned by the first respondent. On 17.12.2014, the lorry loaded with gravel stone and unloaded the same at Kumbakonam and on 18.12.2014, again loaded with salt at Vedharanyam and on the way, the said Lorry was parked near Mulliyaru, in order to prepare the food. When the deceased went to the stream to clean the vessels, accidentally slipped into the river and died. He



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was earning a sum of Rs.7,500/-, besides Rs.50/- as batta per day and totally earning a sum of Rs.9,000/- per month and he was aged about 45 years. A case has also been registered in Crime No.264 of 2014, in respect of the unnatural death of the deceased. Hence, the petitioners have filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. Before the Commissioner of Employees' Compensation, the first respondent remained set *ex-parte*. The 2nd respondent - Insurance Company has filed a counter affidavit calling upon the petitioners to prove the age, monthly income of the deceased and also to prove that the deceased was working as a Cleaner. The Insurance Company has taken a stand before the Labour Court that the deceased was not working as a Cleaner under the first respondent and the accident was also not properly intimated to the Insurance Company.

5. To substantiate the case before the Commissioner of Employees' Compensation, on the side of the petitioners, one witness was examined as P.W.1 and 9 documents were marked as Ex.P1 to Ex.P9 and on the side of the 2nd respondent - Insurance Company, no evidence was adduced and no document was marked.



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6. Based on the evidence and materials, the Commissioner for Employees' Compensation holding that the death was occurred in the course of employment and awarded a sum of Rs.7,52,600/- as compensation. Challenging the same, the present appeal has been filed.

7. When the matter came up for admission, this Court by order dated 16.12.2022, has admitted the Civil Miscellaneous Appeal and has framed the following substantial questions of law, which are as follows:

“1.Whether the Commissioner for Employees' Compensation has failed to decide the issue of employment and the employee-employer relationship and the occurrence of accident during and in the course of employment?

2.Whether the Commissioner for Employees' Compensation has erred in holding the appellant to pay compensation without any liability?

3.Whether the Commissioner Employees' Compensation has the power to go beyond the terms and conditions of the policy and direct the appellant insurance company to pay compensation amount to the petitioner? ”



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8. The learned counsel appearing for the 2nd respondent – Insurance Company vehemently contended that the notional extension theory applied by the Commissioner for Employees' Compensation will not be applicable to the facts of the present case and the deceased took risk in going to the river and drowned. Since it is the public area, the employer will not be liable to pay the compensation. He further submitted that the owner of the lorry has not been examined and he was remained *ex parte* and therefore, there is no evidence to show that the deceased was working as a Cleaner under the first respondent. Therefore, the 2nd respondent - Insurance Company is not liable to pay the compensation.

9. In support of his submission, he has relied upon the judgment of the Manipur High Court in ***The National Insurance Co. Ltd. Vs. Shri Ningshen Romeo*** wherein, it was held that the deceased went to the near by stream and got drowned and therefore, taking bath was voluntary action on the part of the deceased and unconnected with his employment, when the vehicle was static and the Driver was taking rest. Therefore, the claim has been rejected. According to the learned counsel for 2nd respondent – Insurance Company, the above judgment is squarely applicable to the facts of the present case.



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10. The learned counsel appearing for the petitioners / claimants would submit that the evidence of P.W.1 clearly shows that the deceased was employed as a Cleaner under the first respondent. Besides, the FIR filed in this regard also clearly substantiated the above facts. These facts have been rightly considered by the Commissioner for Employees' Compensation. It is the further contention of the learned counsel appearing for the petitioners that the Lorry was proceeding from Vedaranyam after carrying the load of salt and while returning, the Lorry was stopped only for the purpose of cooking meals and the deceased just went to the nearby river to clean the vessels, as a Cleaner and accidentally fell down. According to him, it is clear that the accident was only in the course of employment. Therefore, the Commissioner for Employees' Compensation has rightly applied the theory of Notional Extension Theory and granted compensation, which does not require any interference.

11. Heard the learned counsel appearing for both sides and perused the materials available on record.



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12. It is relevant to note that the deceased was working as a cleaner at the relevant point of time. The Lorry was proceeded to Kumbakonam to unload gravel stone. Thereafter, the Lorry was returned with salt load from Vedharanyam and on the way, the Driver stopped the vehicle only for the purpose of cooking meals. As a Cleaner, the deceased went to clean the vessels to the nearby stream and accidentally, fell down. FIR was filed by the Driver of the Lorry immediately, which was exhibited before the Commissioner for Employees' Compensation and no contra evidence whatsoever have been filed by the 2nd respondent - Insurance Company to show that the Cleaner was never accompanied the Driver at the relevant point of time. Therefore, when the Insurance Company takes a plea that there was no employer-employee relationship, it is for them to establish the above fact. Whereas, the evidence of the claimants proved the fact that the Cleaner was in the course of employment at the relevant point of time. The 2nd respondent - Insurance Company has to disprove the above said fact, whereas no evidence whatsoever have been adduced by the Insurance Company.

13. It is also relevant to note that the Hon'ble Apex Court in *Leela Bai and Seema Chouhan* reported in *2019 (1) TN MAC 504 (SC)*, in paragraph No.9 has held as follows:



“9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of “Notional extension” of the employment considered in Agnes (supra) as follows:

“It is now wellsettled, however, that this is subject to the theory of notional extension of the Employer’s premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer’s premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this Theory of Notional extension.”

14. The Division Bench of the Kerala High Court in ***Oriental Insurance CO. Ltd. Vs.Thankappan*** reported in **2006 ACJ 554**, in paragraph 6 has held as follows:

“6. We cannot consider any case divorced from the facts situation. In the case on hand the evidence clearly disclosed that he had been staying in the bus for the purpose of commencing its trip early morning at 3.30 a.m. The bus was being parked in a petrol bunk and the accident occurred when he went to the nearby stream for the purpose of taking bath along with the driver and the conductor. Thus it has come out in evidence that the deceased



workman along with his colleagues had been there with the bus for the purpose of commencing duty early in the next morning at 3.30 a.m. So there was connection between the accident that had occurred and the duty that he had to perform immediately after that. He had gone for taking bathing just before commencing duty at 3.30 a.m. as he had been staying in the bus for the purpose of taking the bus at that time. So the connection between the accident and the employment is thus manifest.”

15. The Hon'ble Apex Court in *Malikarjuna G.Hiremath Vs. The Branch Manager, The Oriental Insurance CO. Ltd. and another* in Civil Appeal No.956 of 2009, in paragraph No.18 has held as follows:

“18.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.



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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 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."

16. The Hon'ble Apex Court in ***Manju Sarkar & Others Vs. Mabish Miah and others*** reported in ***2014(2) TN MAC 161 (SC)*** has observed that the deceased met with road accident in the course of his employment, the contention that the deceased was employed only for trip from Agartala to FCI Churaibari and ceased to be in employment after reaching there was rejected and held that such accident also falls within the course of employment.

17. Though the Manipur High Court held that there was no connection with employment, as the deceased went to got drowned himself, while taking bath, it is relevant to note that as held by the Apex Court in the judgment referred above, the



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Lorry was carrying load of salt from Vedharanyam and on the way, it was parked to prepare meals. As a cleaner, the deceased just went to clean the vessels and slipped down the river and drowned. Therefore, in such situation, it cannot be said that the Cleaner is not in an employment till the lorry is reached to its destination and given a rest to the Cleaner and Driver, it is deemed that they are in the course of employment. Therefore, the contention of the learned counsel for the 2nd respondent -Insurance Company that the deceased was not in the course of employment cannot be countenanced and it has no basis. With regard to the compensation, age and the factors applied by the Commissioner for Employees' Compensation, no arguments have been advanced by the 2nd respondent – Insurance Company to challenge the same. As the Insurance Company is not disputed the compensation awarded by the Commissioner for Employees' Compensation, this Court does not find any infirmity in the order of the Commissioner for Employees' Compensation. Accordingly, the substantial questions of law are answered.

18. In the result, this Civil Miscellaneous Appeal is dismissed. The 2nd respondent – Insurance Company is directed to deposit a sum of 7,52,600/- (Rupees Seven Lakhs Fifty Two Thousand and Six Hundred) along with interest at



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the rate of 12% p.a., from the date of petition till the date of deposit and costs within a period of one month from the date of receipt of a copy of this order, if not already deposited. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Commissioner for Employee's Compensation,
Dindigul.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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