



C.M.A(MD)No.262 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.262 of 2017

The Branch Manager,
I.C.I.C.I General Insurance Company Ltd.,
Zenith House,
Keshavrao Khakdye Marg,
Opp. Race Course,
Mumbai-400 034.

... Appellant/2nd Respondent

Vs.

1.Vasanthi

2.Minor.Rajalakshmi

3.Minor.Vasanth

4.Palaniammal

... Respondents/Claimants 1-4

5.C.Venkatesan

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 (1) of Workmen Compensation Act 1923, to set aside the award passed in W.C.No.211 of 2010 on the file of the Workmen Compensation Commissioner (Deputy Commissioner of Labour), Trichy, dated 08.09.2014 and allow this above Civil Miscellaneous Appeal.

For Appellant : Mr.V.Muthukamachi



C.M.A(MD)No.262 of 2017

4. The tribunal relying upon the Exhibit P.1 F.I.R given by one Jeyaraj, arrived at a finding that the deceased was the driver of the lorry owned by the 1st respondent and consequently, had arrived at a finding that the driver had died in the course of employment. The learned Commissioner has proceeded to award a sum of Rs.4,14,000/- towards compensation.

5. Though the tribunal has relied upon the medical report that the deceased had died due to poisoning, the tribunal has arrived at a conclusion that he might have consumed poison due to work load. Based upon this finding, the Commissioner has passed the award. Challenging the said award, the present appeal has been filed by the insurance company.

6. The learned counsel appearing for the insurance company had contended that Exhibit P.2 and Exhibit.C.1 will clearly indicate that the deceased had died only due to poisoning. When the deceased had died due to poisoning, he can never be considered to have died out of work load and therefore, the finding of the commissioner is erroneous. He further contended that in the counter affidavit, the company has taken a specific stand that he is not an employee of the 1st respondent and no



C.M.A(MD)No.262 of 2017

document has been placed before the Court except driving license of the deceased person to establish that he was working as a driver with the 1st respondent. Hence, he prayed for allowing the appeal and exonerating the insurance company.

7. The learned counsel for the respondents has not appeared on 24.03.2023 and for the purpose of granting an opportunity, it was adjourned to 27.03.2023. Even today, there is no appearance on the side of the respondents. Therefore this Court proceeds to pass orders on merits after hearing the learned counsel appearing for the appellant.

8. A perusal of Exhibits P.1 and P.2 will clearly indicate that the deceased had died only due to poisoning. Exhibit C.1 chemical analysis report also points out that the deceased had died due to poisoning. It is the specific case of the insurance company that the deceased was not at all employed as a driver with the 1st respondent. No document has been placed on record to establish that the deceased was working as a driver with the 1st respondent. The Workmen Compensation Commissioner has relied upon the F.I.R lodged by the nearby TASMACH shop security to arrive at a finding that the deceased was working as a driver with the 1st respondent.



C.M.A(MD)/No.262 of 2017

9. In the present case, the 1st respondent has not chosen to appear either before the tribunal or before this Court to establish that the deceased was employed as his driver. No document has been placed either before the tribunal or before this Court to establish that the deceased was a driver with the 1st respondent. That apart, the Commissioner has arrived at a finding that the deceased would have consumed poison out of workload. This is nothing, but a presumption. When the deceased had consumed poison and there are no record or evidence to establish that due to heavy work load, he had consumed poison, the finding of the Workmen Compensation Commissioner that he had consumed poison due to over work load, is nothing but a finding based upon presumption without any concrete evidence.

10. In view of the above said deliberations, it could be seen that the deceased had died on his own by consuming poison due to some personal reasons which does not arise out of work load or in the due course of employment. In view of the above said facts, the appeal filed by the insurance company stands allowed and the award of the Workmen Compensation Commissioner is hereby set aside. The amount that was already deposited by the insurance company before the Workmen Compensation Commissioner shall be refunded.



C.M.A(MD)No.262 of 2017

WEB COPY

11. In view of the above said observations, this Civil
Miscellaneous Appeal stands allowed. No costs.

27.03.2023

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

gbg

To

- 1.The Workmen Compensation Commissioner
(Deputy Commissioner of Labour),
Trichy.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.262 of 2017

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.M.A(MD)No.262 of 2017

27.03.2023