



C.M.A.(MD).No.272 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.272 of 2017

and

C.M.P(MD) No.3135 of 2017

The Branch Manager,
New India Assurance Company Ltd.,
67A, Periyakulam Road,
Theni District – 625 531.

..... Appellant/ Respondent-2

-vs-

1. Rajeswari
W/o. Late Murugesan

2. Minor Karthick
S/o. Late Murugesan

3. Minor Geetha
D/o. Late Murugesan

4. Kamatchi
W/o. Late Thangavelu
(2nd and 3rd Respondents represented by mother
and natural guardian of the 1st respondent)

..... Respondents 1 to 4/ Petitioners

5. D.Sekar

....5th Respondent/ 1st Respondent



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PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, against the Award dated 28.10.2016 made in W.C.No.28 of 2013, on the file of the Workmen Compensation Commissioner, Dindigul.

For Appellant : Mr.M.S.Sureshkumar

For Respondents : Mr.T.Vadivelan
for R1 to R4

: Mr.P.Muthuvijaya Pandian
for R5

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the Award passed by the Commissioner, Workmen Compensation, Dindigul.

2. The respondents 1 to 4 herein are the legal heirs of one Murugesan, who was working as a Lorry driver and who had passed away on 30.07.2012 while he was on his duty.

3. The legal heirs of the said Murugesan had filed W.C.No.28 of 2013, before the Deputy Commissioner for Workmen Compensation, Dindigul,



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seeking compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).

According to the claimants, the deceased Murugesan was working as a driver in the lorry belonging to the fifth respondent, and on 30.07.2012, he was helping the load man to unload the Goods in the Koyambedu bus stand at around 12.00 midnight. At that point of time, he developed chest pain and he was admitted to the nearby hospital where he succumbed to heart attack. The claimants had contended that he had received a sum of Rs.10,000/- (Rupees Ten Thousand only) as salary and he was aged about 43 years, while he passed away.

4. The first respondent in the claim petition had filed a counter contending by that the said deceased Murugesan, is a driver and he has admitted nearby hospital on 30.07.2012, where he died due to heart attack. Since he had died due to heart attack, no police complaint was lodged. He further contended that the vehicle has been insured with the second respondent Insurance Company and therefore only the Insurance Company is liable to pay the compensation.



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5. The Insurance Company had filed a counter contending that the deceased was not working as a driver and there are no records to establish that the deceased Murugesan had died due to Heart Attack or due to stress and strain that was caused while he was in the course of employment.

6. The Tribunal after considering the oral or documentary evidence on either side arrived at a finding that the deceased was working as a driver in the lorry belonging to the fifth respondent herein. The Tribunal has also arrived at a finding that the deceased died due to stress and strain and during the course of employment. Thereafter, the tribunal has proceeded to pass an award of a sum of Rs.6,00,432/- (Rupees Six Lakhs Four hundred and Thirty Two only) as compensation. This Award is under challenge in the present appeal.

7. The learned counsel appearing for the appellant had contended that the learned Commissioner has not given any specific finding that the deceased had died due to stress and strain arising out of and during the course of employment. He further contended that there is no pleading on the side of the claimants that the deceased had died due to stress and strain arising out of



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the employment. When the death of the deceased is not relatable to the employment, the owner of the vehicle or Insurance Company cannot be made liable to pay the compensation. Hence, he prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the claimants submitted that the lorry was loaded and the deceased had driven the lorry from Vathalagundu to Koyembedu. The vehicle reached Koyembadu, at about 12.00 midnight and during his working hours the deceased was helping the load man to unload the goods from the lorry. Therefore, only during the course of the employment, the deceased had died due to stress and strain caused by the long hours of driving of the vehicle. He further pointed out that the learned Commissioner has clearly referred to the fact that the deceased had died due to stress and strain arising out of the employment.

9. I have carefully considered the submissions made by the learned counsel on either side.

10. It is not in dispute that the deceased was a driver in the lorry, which was owned by the fifth respondent herein. It is also not in dispute that the



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driver had driven the vehicle from Vathalagundu to Chennai and vehicle reached Koyembedu at around 12.00 midnight on 30.07.2012. It is also not in dispute that the deceased driver was helping the load man in unloading the banana leaves so that he can take the vehicle. Therefore, it is clear only at that point of time, deceased had developed chest pain and he was admitted to a nearby hospital where he succumbed to heart attack.

11. The narration of the above said facts clearly indicate that in the course of employment, the deceased had died due to heart attack arising out of stress and strain while driving the vehicle from Vathalagundu to Chennai.

12. The learned Commissioner has also given a specific finding in Page No. 6 of the order that the deceased had died due to heart attack that arose out of stress and strain arising out of the employment. Therefore, it is clear that the learned Commissioner has given a specific finding with regard to the cause of death of the deceased person and that there is no dispute that the deceased is a workman under the fifth respondent herein. I do not find any illegality or infirmity in the order passed by the learned Commissioner under the Workmen Compensation Act. Therefore, the



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substantial questions of law raised by the Insurance Company are answered against the appellant.

13. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

1. The Workmen Compensation Commissioner,
Dindigul.



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R.VIJAYAKUMAR,J.

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