



C.M.A.(MD).No.877 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.877 of 2017

and

C.M.P(MD) No.9383 of 2017

The Branch Manager,
I.C.I.C.I General Insurance Company Ltd.,
140, Sodabai Centre 3rd Floor,
Nungambakkam Highways,
Nungambakkam,
Chennai – 34.

..... Appellant/ 2nd Respondent

-vs-

1. Amutha
W/o. P.Murugan

2. Saranya
D/o. P.Murugan

3. Saran @ Venkatesan
S/o.P.Murugan

..... Respondents 1 to 3/Claimants 1 to 3

(Minor respondents 2 and 3 are declared as
major and guardianship of their mother/
1st respondent is discharged vide Court
Order dated 14.09.2022 made in
C.M.P(MD) Nos.5459 and 5460 of 2021 in
C.M.A(MD) No.877 of 2017)

4. P.Manikandan

.... 4th Respondent/ 1st Respondent

1/8



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PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act-1923, against the award passed in W.C.No.116 of 2010, on the file of the Workmen Compensation Commissioner, Dindigul, dated 14.07.2017.

For Appellant : Mr.V.Muthukamatchi
For Respondents : Mr.M.P.Senthil
For R1 to R3
: No appearance – R4

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 Workmen Compensation Commissioner, Dindigul, in W.C.No.116 of 2010.

2. According to the claimants, the deceased was a cleaner in a Mahendra Pickup Van owned by the first respondent in the claim petition, which was insured with the second respondent. The claimants have further contended that the deceased as a cleaner was sitting in the cabin of the Mahendra Pickup Van and when the driver had driven the said van in a rash



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and negligent manner the tyre had burst and the vehicle had capsized. Therefore, the cleaner had sustained injuries and he succumbed to the injuries after being admitted in the hospital. An FIR was registered in Crime No.562 of 2008 on the file of the Vathalagundu Police Station. Since the cleaner had died, during the course of the employment, the claim petition was filed under the Workmen's Compensation Act.

3. The owner of the vehicle had remained ex-parte and the second respondent/ Insurance Company had filed a counter contending that there is no employer and employee relationship between the deceased Murugan and the first respondent herein. The Insurance Company had further contended that the deceased Murugan had travelled as a gratuitous passenger in a goods vehicle in an unauthorised manner and therefore, there is a violation of policy condition and hence, they are not liable to pay compensation. Even assuming that the claimants are entitled to compensation, the same has to be paid only by the owner of the vehicle, viz., first respondent herein.

4. The Commissioner under the Workmen's Compensation Act had considered the documents viz., as Ex.P1- FIR and Ex.R1-Policy and also the



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submission on either side and arrived at a finding that there is an employer-employee relationship between the deceased Murugan and the first respondent. The Commissioner has also taken the monthly salary as Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and daily batta as Rs.50/- and has finally arrived at a compensation of Rs.3,98,800/- (Rupees Three Lakhs Ninety Eight Thousand and Eight Hundred only). Since the vehicle was insured with the second respondent herein, the second respondent was fixed with the liability to pay the said compensation. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the Insurance Company, the claimants have not established the fact whether the deceased Murugan was employed as a cleaner in the vehicle belonging to the first respondent. He further contended that the deceased had travelled as a gratuitous passengers in a goods vehicle, and the claimants are not entitled to receive any compensation from the Insurance Company. If at all any compensation has to be paid, the same has to be paid only by the owner of the vehicle. Therefore, he prayed for allowing the appeal.



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6. Per contra, the learned counsel appearing for the claimants had contended that the deceased is nor a gratuitous passengers in the Mahendra Pickup Van. In the FIR, it has been categorically pointed out that the deceased was a cleaner and was sitting inside the cabin of the Mahendra Pickup Van. Therefore, there cannot be any doubt that the deceased was the cleaner of the vehicle and he was travelling inside the cabin of the Mahindra Pickup Van. He further contended that the Commissioner has taken a conservative view with regard to the monthly salary and the batta, and fixed the quantum at Rs. 3,98,800/- (Rupees Three Lakhs Ninety Eight Thousand and Eight Hundred only).

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

8. The main contention of the Insurance Company/appellant is that the claimants have not established that the deceased was a cleaner employed in the vehicle belonging to the first respondent. Immediately after the accident,



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an FIR has been lodged by the one of the gratuitous passengers who was travelling on the trailer. A perusal of the Ex.P.1-FIR, will clearly indicate that they have given a statement that the deceased was sitting in the cabin and he was the cleaner of the said vehicle. The fact that the deceased was sitting only in the cabin and not in the Trailer is not in dispute. Therefore, it is clear that the claimants have established that the deceased was a cleaner and he was not a gratuitous passenger in the Mahendra Pickup Van. Travelling of the cleaner inside the cabin of the vehicle cannot be considered as violation of the policy condition. Therefore, the Commissioner under the Workmen's Compensation Act was right in arriving at a finding that there is an employer-employee relationship between the deceased and the first respondent herein and therefore, the Insurance Company is liable to pay a compensation.

9. In view of the above said discussions, I find that the substantial questions of law, raised by the Insurance Company are answered against the appellant. Accordingly, this Civil Miscellaneous Appeal stands dismissed. A sum of Rs.4,01,300/- (Rupees Four Lakhs One Thousand and Three Hundred only) has been deposited before the Indian Bank, Madurai Bench of Madras High Court, Madurai to the credit of C.M.A.(MD) No. 877 of 2017, pursuant



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to the order of this Court, dated 12.10.2017. The claimants are entitled to withdraw the same in equal proportion. There shall be no order as to costs.

Consequently, connected Miscellaneous Petition is closed.

17.03.2023

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

1. The Workmen Compensation Commissioner,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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