



C.M.A.Nos.1570 & 837 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1570 & 837 of 2021

and C.M.P.No.8178 of 2021

C.M.A.No.1570 of 2021

M/s.Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Towers,
College Road,
Nungambakkam,
Chennai – 600 006.

...Appellant

Vs.

1.Tmt.Vanaja
2.Thiru.Hemaprasath
3.Selvi.Saraniya
4.Tmt.Mangammal
5.Sri Saravana Transport,
No.3/79, Javulikadai Street,
Mugaiyur Village,
Cheyyur Taluk,
Kanchipuram – 631 501.

...Respondents

For Appellant

: Mr.J.Michael Visuvasam

For Respondents

: Ms.M.Malar for R1 to R4



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C.M.A.No.837 of 2021

- 1.Tmt.Vanaja
- 2.Mr.Hemaprasath
- 3.Saranya
- 4.Tmt.Mangammal

...Appellants

Vs.

- 1.Sri Saravana Transport,
No.3/79, Jawulikadai Street,
Mugaiyur Village,
Cheyyur Taluk,
Kanchipuram – 631 501.

- 2.Bajaj Allianz General Insurance Company Ltd.,
No.25/26, College Road,
Nungambakkam,
Chennai – 6.

...Respondents

Common Prayer : Civil Miscellaneous Appeals filed under Section 30 of the Employees' Compensation Act, 1923, against the Final Award dated 22.10.2018 made in E.C.No.293 of 2011 on the file of the Commissioner for Employee's Compensation Court, Joint Commissioner of Labour – II), at Chennai.



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For Appellants : Ms.A.Subadra
For Respondents : Ms.N.Asmitha for R1
for Mr.K.V.Babu
Mr.J.Michael Visuvasam for R2

COMMON JUDGMENT

These appeals have been challenging the Final Award passed by the Commissioner for Employee's Compensation Court, (Joint Commissioner of Labour – II), at Chennai in E.C.No.293 of 2011 dated 22.10.2018.

2.Since the parties and the issues are one and the same, these appeals are disposed of by a common judgment.

3.C.M.A.No.1570 of 2021 is filed by the appellant insurance company on the ground of liability and C.M.A.No.837 of 2021 is filed by the claimants seeking enhancement of compensation.

4.Learned counsel for the appellant insurance company submitted that alleged road traffic accident on 15.01.2011 at 3.30 hrs, on



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G.S.T.Road, while the lorry bearing Registration No.TN 19 B 5779 opposite to Mano Service Station, Acharapakkam, it dashed against a trailer lorry bearing TN 04 K 0264 and the claimants/respondents has to prove the same by documentary evidence. The claimants/respondents filed E.C.No.293 of 2011 before the Commissioner for Employees' Compensation, (Joint Commissioner of Labour – II), at Chennai. The Commissioner for Employees' Compensation, (Joint Commissioner of Labour – II), at Chennai has awarded a compensation for a sum of Rs.6,82,760/- with 12% interest is not sustainable. Hence, he prayed for appropriate orders.

5.The Lorry bearing Registration No.TN 19 B 5779 owned by the fifth respondent was duly insured with the appellant insurance company vide Policy of Insurance bearing OG-11-1529-1803-00000191, valid from 30.06.2010 to 29.06.2011 by documentary evidence.

6.Learned counsel for the appellant insurance company submitted that Late Gurusamy was employed as a 'driver' under the fifth respondent



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in Lorry bearing Registration No.TN 19 B 5779, the claimants/respondents have to prove the same by placing documentary evidence.

7.The appellant insurance company states that the claimants/respondents have not given any 'notice of claim' in terms of Section 10(1) of the Employees Compensation Act, 1923, demanding compensation from the appellant insurance company, for the alleged death of Late Gurusamy. Further, the appellant insurance company states that the fifth respondent has also not intimated any accident occurred on 15.01.2011, resulting in the death of his employee, viz. Late. Gurusamy in the course of his employment as a driver under them.

8.Learned counsel appearing for the appellant submitted that every 'driver' of a motor vehicle should hold a valid driving license, a mandatory statutory requirement, in terms of Section 3 of the Motor Vehicles Act, 1988. He further submitted that RW2, an official from the Regional Transport Office, Tiruvarur was examined to prove that the



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deceased driver had no valid driving license on the date of the alleged accident.

9.Learned counsel appearing for the appellant submitted that the Joint Commissioner was not justified in law in saddling the appellant with liability merely because it had issued a policy of insurance in respect of the fifth respondent's vehicle which was in existence on the date of the accident.

10.Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in ***Rishi Pal Singh vs. New India Assurance Co. Ltd. & Ors.*** reported in ***2022 LiveLaw (SC) 646*** (Civil Appeal No.4919 of 2022 (Arising out of SLP (Civil) No.24933 of 2019)), the Hon'ble Supreme Court has held as follows:

“The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuinenss of the driving license before appointing a driver. Therefore, once the owner is satisfied that the



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driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.”

11.Per contra, learned counsel appearing for the respondents 1 to 4 submitted that the deceased was employed with the fifth respondent as a driver and the appellant insurance company is the insurer for the fifth respondent vehicle. After adjudication, the Commissioner has awarded a compensation for a sum of Rs.6,82,760/- is very meagre and hence, he seeks for enhancement of compensation.

12.Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents and perused the materials available on record.

13.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only questioning the



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quantum of compensation. Hence, there is no need for any discussion with regard to negligence.

14.Before the Commissioner, the first petitioner was examined as PW1 and 7 documents were marked as Exs.P1 to P7 on the side of the petitioners and Mr.J.Sampath, Mr.A.Rajasekar and Mr.Balaji Damo were examined as PW1 to PW3 and 4 documents were marked as Exs.R1 to R4.

15.On perusal of records, it is seen that there is no documentary evidence with regard to Late Gurusamy was aged 45 years at the time of the accident and he was paid Rs.15,000/- per month as wages by the fifth respondent.

16.The appellant insurance company has examined the RTO before the Commissioner, the RTO Official made it clear that the driving license produced by the claimants before the Law Enforcing Agency in support of their claim was found to be a fake one. Hence, this Court arrived at a



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conclusion that the deceased was not an employee with the fifth respondent as a driver and hence, the claim petition is not maintainable.

17.In the result, the appeal filed by the appellant in C.M.A.No.1570 of 2021 is allowed and the appellant is permitted to withdraw the amount. The claim made by the appellants/claimants in C.M.A.No.837 of 2021 is rejected and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Commissioner for Employee's Compensation Court,
(Joint Commissioner of Labour – II), Chennai
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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M.DHANDAPANI, J.

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