



CMA No.1701 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.1701 of 2020
and C.M.P. No.8993 of 2021

Judgment reserved on 21.02.2024	Judgment pronounced on 28.03.2024
--	--

United India Insurance Company Limited,
Silingi Buildings,
New No.134, Old No.40-45,
Greams Road, Chennai - 6.

.. Appellant

Vs.

1.Mallika Devi
2.M.Balakrishnan
3.M.Chinnaponnu

.. Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923 against the order dated 23.12.2019 in E.C.No.202 of 2016 passed by the Deputy Commissioner of Labour - II Court, Chennai.

For Appellant : Mr.P.Sankaranarayanan

For R-1 & R-2 : Mr.K.Varadha Kamaraj

For R-3 : No appearance



CMA No.1701 of 2021

JUDGMENT

WEB COPY The Insurance Company is the appellant herein challenging the award passed in W.C.No.202 of 2016.

2. At the time of the admission, the following Substantial Questions of Law was framed:

(i) Whether the finding of the learned Deputy Commissioner of Labour - II that there existed a master and servant relationship between the insured and the deceased is correct when the contents of the Ex.P1 FIR lodged by the 2nd claimant are contrary to the pleadings?

(ii) Whether the finding of the learned Deputy Commissioner of Labour - II relating to the master and servant relationship is correct in view of the non-establishment of the said fact by the claimants?

3. The first claim petitioner is the widow of the deceased Giri Rajan. She filed a claim petition W.C.No.202 of 2016 against the owner of the vehicle and the Insurance Company on the ground alleging that while her husband Giri Rajan was working as a Cleaner cum Loadman with the first respondent, on 25.05.2016 at about 3.00 a.m., the lorry bearing Registration No.TN 05 W 8727 was parked on the left hand side of the road and GiriRajan was sleeping in the cabin of the lorry and when he tries to claim the metal



CMA No.1701 of 2021

stair he fell down. He was earning Rs.500/ at the time of the accident, and he was aged about 28 years and filed Ex.P1 F.I.R. The owner of the vehicle remained ex-parte before the authority. The Insurance Company has filed counter statement refused the alleged existence of employer - employee relationship.

4. In the trial, the claim petitioner examined herself as P.W.1 and marked Exs.P1 to P6. On behalf of the respondents, the Assistant of the Insurance Company examined as R.W.1 marked Exs.R1 to R8 and Assistant from the R.T.O office was examined as R.W.2 and marked Ex.R8.

5. On consideration of both oral and documentary evidence, the Authority has held that there exist a employer - employee relationship between the deceased with the first respondent lorry owner and he died in the course of the employment. Accordingly, awarded compensation of Rs.8,47,160/- with 500/- towards funeral, in toto Rs.8,52,160/-. Hence, the appeal was admitted on the above said Substantial Questions of Law.



CMA No.1701 of 2021

6. Heard the learned counsel appearing for the appellant-Insurance

Company and the claim petitioner.

7. The learned counsel for the petitioner herein claimed that under Ex.P1 F.I.R, the father of the victim has stated that the deceased was employee as a cinema manpower agent and there is no master & servant relationship between the injured and the deceased to attract the provision of Act and also contended that the deceased was unauthorized passenger in the insured vehicle and hence as per the policy of condition, the liability of the Insurance Company is restricted only to the authorized workers and not for the passenger. Hence, prayed for setting aside the award.

8. The learned counsel for the claim petitioner made submissions in support of the award.

9. After perusing the chief-examination of P.W.1 along with Ex.P1 and Ex.P6, this Court finds that the deceased Giri Rajan died while claiming the metal stairs to the top of the lorry and Ex.P2 is the Post-mortem certificate



CMA No.1701 of 2021

and Ex.P5 is the Registration Certificate of the vehicle. Ex.P6 is the policy copy on the date of the accident, the policy Ex.P6 issued by the appellant herein is enforced.

10. The contention of the learned counsel for the appellant is taken note of.

11. On behalf of Insurance Company, on Court summons Assistant from the North Madras R.T.O office Mr.Suman, was examined as R.W.2 and marked Ex.R8 relating to Registration Certificate and Fitness Certificate. (RC&FC).

12. During the cross-examination with regard to the permit he could state that no records found and in view of the admission made by the competent person, officer from the RTO office that on the date of the accident, the R.C was available and based upon the availability of the permit alone, they have issued the fitness certificate. The authority has rightly come to the conclusion that on the date of the accident, the vehicle was duly



CMA No.1701 of 2021

possessed registration certificate and the fitness certificate. Such a finding rendered by the Deputy Commissioner is well founded based upon the merits and the admission of the R.W.1 coupled with Ex.P8 and accordingly, the same is hereby confirmed.

13. R.W.1 is the Assistant from the Insurance Company. He had marked Exs.R1 to R7 in which Ex.R2 assumes significance. Ex.R2 is the statement given by the husband of the owner of the vehicle and R.W.1 has admitted in the cross-examination that the Murugan and the owner of the vehicle has admitted about the employment of the deceased person as a cleaner cum loadman before the Investigation Officer and such an admission by the employer to the Investigation Officer the sufficient enough to hold the fact that there is a employer-employee relationship between the deceased and the owner of the lorry.

14. It remains to be stated that neither the Insurance Company taken any steps to examine the Murugan nor his wife - the owner of the vehicle to rebut the such an admission made by the R.W.1 in the witness box assumes significance.



CMA No.1701 of 2021

15. For the reasons best known, the Insurance Company has chosen to burk and has not filed the investigation report before the Deputy Commissioner and hence, I find that suppression of the investigation report by the Investigation Officer appointed by the Insurance Company before the Authority assumes significance and no reason has been assigned by the appellant/Insurance Company for burking such report and hence, I find that the Deputy Commissioner has rightly relied upon the admission made by the parties R.W.1 and R.W.2 in the cross-examination regarding nature and character of the employment between the deceased and the R1 - lorry owner and also the admission made by R.W.1 regarding the issuance of Registration Certificate and Fitness Certificate to the vehicle involved in the incident and hence, all the points raised by the appellant-Insurance Company stands negatived on the factual position as discussed supra and there is no substantial question of law. The finding rendered by the authority is well merited and well considered and does not require any interference at the appellate stage. Admission being best piece of the evidence, the substantial questions of law are held against the appellant and there is no merits in this case.



CMA No.1701 of 2021

WEB COPY

16. In fine,

(i) this Civil Miscellaneous Appeal is dismissed confirming the compensation awarded by the Tribunal dated 23.12.2019 in E.C No.202 of 2016 passed by the Deputy Commissioner of Labour - II Court, Chennai.

(ii) the appellant/United India Assurance Company Limited is directed to deposit the award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the first respondent/claim petitioner is permitted to withdraw the award amount, less the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) No costs. Consequently, connected C.M.P is closed.

28.03.2024

nvi

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/No

8/10



CMA No.1701 of 2021

WEB COPY To

1. The Deputy Commissioner of Labour - II Court, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.



WEB COPY



CMA No.1701 of 2021

RMT.TEEKAA RAMAN.J,

nvi

Judgment made in
C.M.A.No.1701 of 2021 and
C.M.P.No.8993 of 2021

28.03.2024