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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 04 / 2024

JUDGMENT PRONOUNCED ON : 07 / 06 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.2323 OF 2021

AND

CMP NO.12167 OF 2021

United India Insurance Co. Ltd.,
Motor III Party Claims Office
Shillingi Buildings,
134, Greams Road,
Chennai – 600 006.

... Appellant /
2nd Opposite Party

Versus

1.M.Ramayi
2.K.Muthusami

... Respondents 1 & 2 /
Applicants

3.M.Kumar
/

... Respondent 3

1st Opposite Party

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, praying to set aside the order dated 10.01.2020 made in E.C.No.83 of 2016 on the file of the Commissioner of Employees



CMA NO.2323 OF 2021

Compensation and Joint Commissioner of Labour – II, Chennai – 6.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 & 2 : Mr.M.Pachaiyappan

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J U D G M E N T

The appellant is the second respondent in *E.C.No.83 of 2016* on the file of the 'Commissioner for Employees Compensation and Joint Commissioner of Labour – II, Chennai' (henceforth 'the Commissioner').

2.For the sake of convenience, henceforth, the parties will be referred to as per their array before the Commissioner *i.e.*, 'appellant', 'respondents 1 and 2', and 'third respondent' herein will be referred to as 'second opposite party', 'applicants' and 'first opposite party' respectively.

3.Felling aggrieved with the order dated *January 10, 2020* passed by the Commissioner in *E.C.No.83 of 2016*, the second opposite party has preferred this Civil Miscellaneous Appeal under Section 30 of Employees' Compensation Act, 1923, praying to set aside the order.



CMA NO.2323 OF 2021

4.The applicants filed a claim petition before the Commissioner seeking compensation for the death of their son - Sakthivel who was employed as a Driver under the first opposite party for his Auto Rickshaw bearing Registration No.TN-05-AE-5144.

5.The case of the applicants is that the applicants are the parents of the deceased - Sakthivel who was employed as a Driver under the first opposite party for his Auto Rickshaw bearing Registration No.TN-05-AE-5144; that on *February 3, 2016*, at about *17.00 hours*, while the deceased - Sakthivel was driving the above said Auto Rickshaw at GST Road, near Irungundram Palli Bus Stop, Chengalpet Taluk, Kancheepuram District, an unidentified Lorry driven in a rash and negligent manner along the same direction collided with the back of the Auto and thereby the Auto lost its control and ran into the Barricade and the EB Post; that in the above said accident, the deceased - Sakthivel sustained severe injuries in his head and chest; that immediately after the accident, he was brought to Government Hospital, Chengalpet and after first aid, he was transferred to Rajiv Gandhi Government General Hospital, Chennai, where he passed away on *February 3/12*



CMA NO.2323 OF 2021

5, 2016, as a result of the injuries sustained by him in the accident; that a case in *Crime No.51 of 2016* was registered in D2 Chengalpet Taluk Police Station; that the deceased was 32 years old at the time of accident and he was unmarried; that the accident has happened to the deceased arising out of and in the course of his employment as Driver; that the first opposite party has insured his Auto Rickshaw with the second opposite party - insurance company; that the said insurance policy was in force on the date of the accident and that the 1st and 2nd opposite parties are liable to pay compensation to the applicants as per the provisions of the Employees' Compensation Act, 1923.

6.The first opposite party did not appear and file counter and hence, he was set *exparte*.

7.The second opposite party filed a counter wherein it has denied the employment of the deceased - Sakthivel as a Driver with the first opposite party. Further, contended that, the alleged accident did not take place in the course of employment; that there was no employer/employee relationship



CMA NO.2323 OF 2021

between the first opposite party and the deceased; that there was no valid permit for the vehicle in question; that the deceased was not holding valid driving license along with badge to drive the Auto Rickshaw; and that the second opposite party is not liable to pay compensation. Accordingly, the second opposite party prayed to dismiss the petition.

8. Upon considering the materials available on record, the Commissioner framed the following points for consideration:

“1) Whether the deceased - Sakthivel died of personal injuries sustained by him in an accident arising out of and in the course of his employment under the first respondent?

2) Whether the applicants are entitled to receive compensation? If so to fix the quantum of compensation?

3) Whether the second respondent – insurance company is liable to pay compensation and interest to the applicants?

9. Before the Commissioner, the second applicant was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked. The first opposite party was examined as P.W.2 through whom Ex-A.11 was marked. On the side of the



CMA NO.2323 OF 2021

second opposite party, one Thiru M.Mahendran was examined as R.W.1 through whom Ex-R.1 and Ex-R.2 were marked, and one Thiru. Sukumar was examined as R.W.2 through whom Ex-R.3 and Ex-R.4 were marked.

10.After analyzing the oral and documentary evidence available on record, the Commissioner concluded that the deceased - Sakthivel was working as a Driver under the first opposite party at the time of accident and he suffered personal injuries during the course of his employment; that at the time of accident, the deceased - Sakthivel was holding a valid driving license to drive the Light Motor Vehicles (LMV); and that in view of the decision of the Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited [2017 (14) SCC 663]***, no separate endorsement was required to drive the Light Motor Vehicles as defined in Section 2(21) of the Motor Vehicles Act, 1988. Accordingly, the Commissioner awarded a sum of Rs.8,20,400/- (Rupees Eight-Lakh Twenty-Thousand and Four Hundred only) as compensation to the applicants along with interest at the rate of 12% per annum from the date of accident.



CMA NO.2323 OF 2021

11. Feeling aggrieved with the said order, the second opposite party / insurance company has filed this Civil Miscellaneous Appeal.

12. The only point that arises for consideration in this Civil Miscellaneous Appeal is,

Whether the deceased was holding a valid driving license to drive Auto Rickshaw (transport vehicle) at the time of accident?

ARGUMENTS

13. Mr. S. Arun Kumar, learned counsel for the appellant / 2nd opposite party has submitted that, although the deceased possessed a valid driving license for operating a Light Motor Vehicle at the time of the accident, it lacked the necessary endorsement for driving a Transport Vehicle. The Commissioner relied on the decision of the Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Company Ltd., [2017 (14) SCC***



CMA NO.2323 OF 2021

663/ and awarded compensation to the applicants. However, the said decision has been referred to a Larger Bench of the Hon'ble Supreme Court and the reference is still pending in ***Bajaj Alliance General Insurance Vs. Rambha Devi and Others [Civil Appeal No.841 of 2018]***. Accordingly, he prays to allow the appeal. Accordingly, he prayed to dismiss the appeal.

14.In response, Mr.M.Pachaiyappan, learned counsel for the 1st and 2nd opposite parties has submitted that the deceased was holding a valid driving license to drive Light Motor Vehicles at the time of accident and the Commissioner has awarded compensation accordingly. Therefore, there is no reason to interfere with the award passed by the Commissioner. Accordingly, the learned counsel prayed to sustain the order passed by the Commissioner.

15.This Court has considered the submissions made on either side.

16.There is no dispute with respect to the employer-employee relationship between the deceased and the first opposite party at the time of



CMA NO.2323 OF 2021

accident. The age of the deceased at the time of accident is also not in dispute.

Further, as per Section 4 read with Schedule IV of the Employees' Compensation Act, 1923, taking into account the age of the deceased at the time of accident, the Commissioner has arrived at the compensation of Rs.8,20,400/- including funeral expenses, which appears to be a just and reasonable compensation and there is no dispute with regard to the quantum of compensation awarded. The only point agitated in this appeal is the validity of the deceased's license without endorsement (badge), to drive a transport vehicle.

17.In *Mukund Dewangan's case (supra)*, which was relied on by the commissioner to conclude the validity of the deceased's license, the Hon'ble Supreme Court held that a driver holding a license to drive a Light Motor Vehicle, can drive a transport vehicle of such class without any endorsement to that effect. Learned Counsel for the appellant submitted that *Mukund Dewangan's case (supra)* has been referred to a larger bench. It is apposite to mention here that in *Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and Others [Civil Appeal No.841 of*



CMA NO.2323 OF 2021

2018, order dated 22.11.2023], the Hon'ble Constitutional Bench of the Supreme Court, which seized the reference, has held as follows:

“During the pendency of this reference, the judgment of the three-judge Bench in Mukund Dewangan (supra) shall continue to hold the field and all courts, tribunals and authorities shall, therefore, act on that basis.”

18.In view of ***Mukund Dewangan's case (supra)*** and the above order dated *November 22, 2023* passed by the Hon'ble Supreme Court in ***Bajaj Alliance's case (supra)***, this Court is of the view that the deceased - Sakthivel was holding a valid driving license to drive a Light Motor Vehicle at the time of accident and therefore, it is not mandatory for him to have an endorsement or badge, to drive an Auto Rickshaw or any other transport vehicle of such class at the relevant point of time. The point that arises for consideration in this Civil Miscellaneous Appeal is answered accordingly.

19.Accordingly, the order dated *January 10, 2020* passed in *E.C.No.83 of 2016* by the Commissioner for Employees Compensation and



CMA NO.2323 OF 2021

Joint Commissioner of Labour–II, Chennai is sustained and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

07 / 06 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

The Commissioner of Employees Compensation
and Joint Commissioner of Labour – II
Chennai – 6.



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CMA NO.2323 OF 2021

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2323 OF 2021

07 / 06 / 2024