



WEB COPY



C.M.A. No. 88 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.88 of 2022

1. Jayanthi
2. Ragavi
3. Minor. Gunasekar
4. Rajamma
(Minor third appellant is represented
by his mother/ guardian first appellant) ... Petitioners/ Appellants

Vs.

1. M.D. Ganesh Babu
2. The Divisional Manager,
Oriental Insurance Company Limited,
Jambubala Complex, 1st Floor,
Arcot Road,
Vellore. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 30 of Employee's Compensation Act, 1923 against the Judgment and decree dated 30.10.2019, made in W.C. No. 275 of 2015 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Vellore.

For Appellant : Mr. M. Sivakumar
For R1 : No Appearance
For R2 : Mr. Elveera Ravindran



WEB COPY



C.M.A. No. 88 of 2022

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants challenging the rejection of the petition filed for seeking compensation for the death of one Govindaraj made in W.C. No.275 of 2015 dated 30.10.2019, on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Vellore.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The claimants/ appellants herein are the dependents of the deceased Govindaraj and he was working under the first respondent, as a driver in lorry bearing Registration No.TN-23-AB-2212. On 14.01.2014, while he was transporting the goods from Vellore to Sriperumbudur in the said lorry, at about 11:30AM, he parked the lorry near Jain Cable Company on the left hand side of the Vellore to Sriperumbudur road and slept in the



WEB COPY

cabin of the lorry. While he was sleeping, he accidentally fell down and sustained injuries, subsequently, admitted to Sriperumbudur Government Hospital and died on the same day. Since, the deceased as sustained injury and died during the course of his employment, the claimants have come forward for seeking compensation for a sum of Rs.15,00,000/- by invoking Employment Compensation Act.

4. The claim petition was resisted by the insurance company on the ground that the deceased was not died, due to the employment injury and further disputed the age, income and dependency of the claimants, hence, they are not liable to pay the compensation.

5. The learned Labour Commissioner, after conducting enquiry and recording the evidence had held that the deceased was not died, due to employment injury, thereby the claimants are not entitled to claim compensation under the Employment Compensation Act, thereby dismissed the claim petition filed by the claimants.

6. Aggrieved over the findings and dismissal of the claim petition

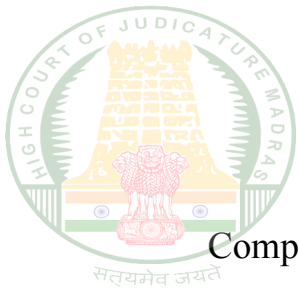


by the Labour Court, the claimants have come forward with this appeal.

WEB COPY

7. The learned counsel appearing for the claimants/ appellants submits that, admittedly, in the FIR given by the cleaner, it is stated that while the deceased was sleeping in the cabin of the lorry, accidentally fell down and sustained injuries. This was not taken into account by the Labour Commissioner. He would further submit that the information of the Doctor, who conducted postmortem was not furnished or issued till date, thereby, they were not able to produce the final report to show that the deceased has sustained employment injury and died. Therefore, he prayed to set aside the order of the Labour Court and to award compensation to the claimants.

8. The learned counsel appearing for the insurance company submits that the occurrence has taken place in the year 2014 and contended that the postmortem was conducted on the deceased body and further no internal or external injuries were found in the body of the deceased. Therefore, in the absence of any final report of the Doctor, the Labour Commissioner had rightly held that the deceased has not sustained any employment injury, which attracts Section 3 of the Employment



Compensation Act, for claiming compensation. This appeal was admitted

WEB COPY

on the following substantial question of law:

(i) *Whether the non-production of final report of criminal case would dis-entitle the claimants from claiming compensation?*

(ii) *Whether the reason given by the Commissioner that the deceased was not died due to employment injury is based on perverse finding or not?*

9. I have considered the submissions made on both sides and perused the materials available on record.

10. The order passed by the Labour Commissioner shows that the claimants have come forward to file the claim petition, based on the FIR and the postmortem certificate, which are marked as Exs.P.1 and P.2. In the FIR, it has been stated that the deceased was fell down accidentally, while he was sleeping in the cabin of the lorry, thereby sustained injury and died. In the postmortem report, it has been stated that no external or internal injuries were noted, more particularly, not even any contusion, were found in any vital parts of the deceased.



WEB COPY

11. Admittedly, the final opinion of the Doctor, who conducted postmortem with regard to cause of death, was reserved for getting viscera report. There is no evidence placed on record by the petitioners, whether final opinion was issued by the Doctor. Since the case is of the year 2014, the police would have filed Final Report in this case, based on the final opinion given by the postmortem Doctor. Similarly, the final report of the police was also not produced. Since, the claimants are claiming compensation under the Employment Compensation Act, the burden is on them to prove that the deceased died, due to the injury sustained by him during the course of his employment.

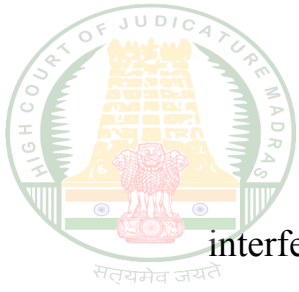
12. In the counter filed by the respondent, it is stated that the deceased was died due to viral infection, however, they have also not adduced any evidence to prove the same. Before the Labour Commissioner, the arguments were also advanced to the effect that, even if the deceased died due to cardiac arrest, the claimants are entitled for claiming compensation, since the deceased sustained cardiac arrest during the course of his employment. Admittedly, in this case, the claimants have not adduced any evidence to link the death of the deceased with any injury sustained



WEB COPY

during his course of employment or the death was occurred due to the nature of work, the deceased was employed. The claimants have not examined the cleaner, who lodged the complaint or attempted to examine any person who have direct knowledge about the FIR. In the absence of any evidence to show that there is a link between the death of the deceased with the employment injury, the claimants are not entitled to get compensation.

13. The Section 3 of the Employment Compensation Act, attracts only when the claimants are able to establish that the death or injury of the employee is caused during his course of employment. In this case, the question regarding the death of the deceased during his course of employment was not established by the claimants. Therefore, the Labour Commissioner held that the deceased was not died, due to the injury sustained during his course of employment, thereby rejected the claim petition filed by the claimants invoking Section 3 of the Employment Compensation Act. Since the finding of the Commissioner based on evidence adduced on the side of both sides and no perversity was pointed out by the claimants herein. The Commissioner has given proper reasons for rejecting the claim made by the claimants. This Court finds no reason to



C.M.A. No. 88 of 2022

interfere in the award of the Labour Commissioner, thereby, this appeal is liable to be dismissed.

K. RAJASEKAR, J.

stn

14. Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected civil miscellaneous petition, if any stands closed.

There shall be no order as to cost.

22.11.2024

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Deputy Commissioner of Labour,
Vellore.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 88 of 2022

C.M.A. No. 88 of 2022