



C.M.A(MD)No.1033 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 07.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1033 of 2011

and

M.P(MD)No.1 of 2011

&

C.M.P.(MD)No.6903 of 2019

The Branch Manager,
The New India Assurance Co. Ltd.,
No.29, Paramathi Road,
Namakkal.

... Appellant / Second Respondent

Vs.

1.Selvi @ Keppaayee

2.Thayammal

... Respondents / Petitioners

3.K.Kandasamy

... Respondent / First Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against order dated 10.12.2007 made in W.C.No.241 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.



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C.M.A(MD)No.1033 of 2011

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : no appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the order passed in W.C.No.241 of 2006 on the file of the Deputy Commissioner of Labour, Trichirappalli wherein the respondents 1 & 2 herein have filed the petition for compensation for the death of one Andi and the Tribunal has awarded a sum of Rs.3,23,048/- with interest at the rate of 12% per annum. As against the order passed by the Tribunal, the Insurance Company / appellant has preferred this appeal.

2. For the sake of convenience, the parties herein are referred to as per their ranking in the main petition.

3. The petition before the Tribunal was filed by the petitioners therein alleging that Mr.Andi is the husband of the first petitioner and the son of the second petitioner. The deceased was working as Assistant under the employment of the first respondent. While so, on 24.03.2005, when the deceased along with the driver was proceeding with the lorry



C.M.A(MD)No.1033 of 2011

bearing Registration No.AP-10-E-663 from Bihar to Tamil Nadu near Jeya Prakash Jana, the deceased fell down from the lorry and died on the spot itself. At the time of death, the deceased was only aged about 48 years and he was earning a sum of Rs.5,000/- per month. The death was caused during the course of employment and the lorry in which the deceased was working which belongs to the first respondent and the same was insured with the second respondent. Therefore, the Insurance Company/second respondent is liable to pay compensation to the petitioners.

4. The case of the second respondent/Insurance Company before the Tribunal is that the second respondent denied the averments made in the petition and the respondents denied that the deceased was working as assistant under the employment of the first respondent. The first respondent is the owner of the vehicle and the driver of the first respondent's lorry had no valid license on the date of the accident. The deceased was not travelled as assistant in the vehicle. The respondents denied the age, occupation and income of the deceased. Therefore, this petition is liable to be dismissed.



C.M.A(MD)No.1033 of 2011

WEB COPY

5. Before the tribunal, in order to prove the case of the petitioners, they examined P.W.1 and marked Ex.P1 to Ex.P5. On the side of the respondents, they examined R.W.1 and marked Ex.R1. After analyzing the evidence adduced on either side, the Tribunal has awarded a sum of Rs.3,23,048/- towards compensation and directed the second respondent to pay the award amount. Being aggrieved by the order of the Tribunal, the second respondent has filed this appeal on the ground that the cause of death is not due to the accident and the deceased died due to the explosion of explosive substances.

6. The learned counsel appearing for the appellant would contend that the deceased was not working under the employment of the first respondent and was not travelled as assistant in the lorry and the deceased not died due to the accident but he died elsewhere due to the explosion of explosive substance. But the Tribunal has not considered the same and awarded compensation by directing the appellant / second respondent to pay the said amount. Therefore, the award passed by the Tribunal is liable to be set aside by allowing this appeal.



C.M.A(MD)No.1033 of 2011

WEB COPY

7. On the side of the respondents, there is no representation. Already notice has been served on them. In spite of that, they did not appear and the names of the respondents were also printed in the cause list.

8. Upon hearing the appellant's counsel and perusing the records, the point for determination in this appeal is whether any substantial question of law is involved in this case and the appeal is to be allowed or not?

9. In this case, the appellant disputed the accident and also the cause of death. According to the respondents 1 & 2/petitioners, the deceased was working under the employment of the first respondent as assistant and on the date of occurrence i.e., on 24.03.2005, when he was proceeding in the lorry belonging to the first respondent, he fell down and died on the spot itself. The contention of the respondents 1 & 2/petitioners was disputed by the appellant/2nd respondent. According to the appellant/2nd respondent, the deceased was not working under the employment of the third



C.M.A(MD)No.1033 of 2011

WEB COPY

respondent/1st respondent and also the death is not caused due to the accident but he died due to the explosion of explosive substance. In order to prove the case of the petitioners, they examined P.W.1 and marked Ex.P1 to Ex.P5. On the side of the respondents, they examined R.W.1 and marked Ex.R1. P.W.1 in the evidence stated that the deceased died due to accident and also produced the postmortem certificate as Ex.P4. On perusal of Ex.P4 - Postmortem Certificate, it reveals that the deceased died due to shock and hemorrhage by injury to neck by hard blunt substance. Therefore, the deceased died due to shock and hemorrhage by injury to neck by hard blunt substance. Nowhere, it is stated that the deceased died due to explosion of explosive substance.

10. The evidence of P.W.1 and Ex.P4 revealed that the deceased died due to shock and hemorrhage by injury to neck by hard blunt substance. Per contra, R.W.1 in his evidence stated that the deceased died due to explosion of explosive substance. To substantiate his contention, there is no record produced by the appellant / 2nd respondent and mere oral evidence is not sufficient. When the postmortem certificate reveals the cause of death, the appeal has been preferred on the main ground that the



C.M.A(MD)No.1033 of 2011

deceased not died due to the accident. The Tribunal after taking into consideration of the evidence adduced by the parties came to the conclusion that the deceased died due to explosion of explosive substance and not died due to the accident. Therefore, without any evidence, it is not appropriate to hold that the deceased not died due to the accident. Therefore, the order passed by the Tribunal is in order and there is no any infirmity or perverse in the order passed by the Tribunal. On a careful perusal of the entire case records, there is no substantial question of law involved in this case and the grounds raised by the appellant are all factual aspects. Hence, this Court has no warrant to interfere with the order passed by the Tribunal.

11. In view of the above, this Court is of the view that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. In the result, this Civil Miscellaneous Appeal is dismissed. The order passed by the Tribunal in W.C.No.241 of 2006 is confirmed. Consequently, connected miscellaneous petitions are closed.

07.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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C.M.A(MD)No.1033 of 2011

P. DHANABAL, J.

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To

1.The 1st Additional District Court, Thoothukudi.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.1033 of 2011

07.02.2024