



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 1307 of 2013

and

M.P(MD)No.1 of 2013

The Tata AIG General Insurance,
Company Limited,
Through its Branch Manager,
No.1, Commander-in-Chief Road,
Ethiraj Salai, Egmore,
Chennai-600 008.

... Appellant

Vs.

1. Paulraj
2. Muthammal
3. S.Uma Maheswari
4. Mahesh

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside award dated 31.10.2012 made in W.C.No.34 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, received on 24.02.2013 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.S.Sivasubramanian, for R-1 & R-2

R-3 : No appearance



JUDGEMENT

WEB COPY

This Civil Miscellaneous Appeal is filed to set aside award, dated 31.10.2012 passed in W.C.No.34 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli.

2. It is a case of fatal. The order is passed under the Workmen Compensation Act.

3. The contention of the Insurance Company is that the deceased had never ever worked under the 3rd respondent herein/employer and hence there is no employer and employee relationship between the 3rd respondent and the deceased, consequently the Insurance Company is not liable to pay any compensation. It is the contention of the Insurance company that the parents of the deceased have not produced any iota of evidence to prove the employer and employee relationship, but the Labour Court had directed to pay compensation by the employer. Hence this Appellant is before this Court.

4. On perusal of the documents and pleadings, it is seen that the 3rd respondent/employer had filed counter before the Labour Court denying employment. But the employer had not participated in the further proceedings which was recorded in the impugned order. When the employer had filed



counter denying employer and employee relationship, then the employer ought to be available for cross-examination. When the employer had not appeared and deny the cross-examination opportunity to the employee, then the averment stated in the counter cannot be taken, rather ought to reject the counter. Infact adverse inference can be taken against the employer.

5. The further contention of the Insurance Company is that at the time of accident, the deceased was working as 'G' 4S Security service and he was not appointed as Driver by the 3rd respondent. Infact the 3rd respondent was already having one Driver by name, Manikandan. The deceased had taken the vehicle when the said Manikandan had gone to wash his face and had a pleasure trip in 10th Avenue Road at Ashok Nagar, Chennai and committed the accident. The deceased had not taken any permission to take the vehicle. To prove the said contention, the 3rd respondent should ought to have made himself available for cross examination. As held supra when the 3rd respondent did not appear for cross examination. Therefore, by relying on the bare statement of the 3rd respondent it cannot be stated that the deceased was never ever employed under the 3rd respondent. Therefore, the Labour Court has rightly fixed negligence on the 3rd respondent. Consequently, the Insurance Company is liable to pay compensation.



WEB COPY

6. The next contention of the Insurance Company is that the salary of the deceased is fixed by the Tribunal as Rs.4,000/- and the same is on the higher side. It is seen that the accident had happened in the year 2008 and hence the salary of the deceased is on the higher side. However, instead of reducing the salary, this Court is inclined to reduce some amount from the total compensation of Rs.4,37,560/- awarded by the Tribunal. This Court is inclined to grant a sum of Rs.3,80,000/- as compensation.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The Insurance Company is directed to deposit a sum of Rs.3,80,000/- as compensation with 12% interest along with costs, less the amount if already deposited, within a period of 8 weeks from the date of receipt of a copy of the Judgment. On such deposit, the claimants are entitled to withdraw a sum of Rs.1,90,000/-, each. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA



WEB COPY

To

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Tirunelveli.

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



WEB COPY



S.SRIMATHY, J.

KSA

**Judgment made in
C.M.A(MD)No.1307 of 2013**

24.06.2024