



C.M.A.(MD).No.1396 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1396 of 2013

and

M.P(MD) No.1 of 2013

M/s.National Insurance Company Limited,
Rep by its Manager,
No.43, Rasi Plaza, West Pradatchinam Road,
Karur.

... Appellant/2nd Respondent

-vs-

1. Rani

... Respondent/Petitioner

2.Ranjani

3.Minor Ramya

(The third respondent is represented by her guardian, next friend,
the first respondent)

4.Ramasamy

5.Karuppayee

... Respondents/Petitioners 1 to 5

6.K.S.Ramasamy

... Respondent/1st Respondent

PRAYER:Civil Miscellaneous Appeal filed under Section 30 of Workmen's
Compensation Act, to set aside the order passed in W.C.No.30 of 2010 dated



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31.01.2013 on the file of the Deputy Commissioner of Labour, Dindigul.
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For Appellant : Mr.P.Malini

For R1 to R5 : Mr.M.Gangatharan
for Mr.M.Karthikeya Venkatachalapathy

For R6 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.30 of 2010 on the file of the Deputy Commissioner of Labour, Dindigul, wherein, the respondents 1 to 5 have preferred the claim petition before the Tribunal. The Tribunal has awarded a sum of **Rs.3,41,380/- (Rupees Three Lakhs Forty One Thousand Three Hundred and Eighty only)** and directed the appellant/2nd respondent to pay the said amount along with interest at the rate of 12% per annum within a period of 30 days. As against the order passed by the Tribunal, the appeal has been preferred by the appellant/second respondent.

2. The brief facts of the averments made in the petition before the Tribunal are as follows:

The petitioners 1 to 5 are the legal heirs of the deceased Raju, who was



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working as a Cleaner-cum-driver under the first respondent's Lorry bearing Registration No.KA-40-1341. On 07.07.2009, at about 07.00 p.m, the lorry was proceeding towards Hubli, Karnataka after loading salt from the Thoothukudi through Samayanallur, Madurai District. On 08.07.2009, at about 04.30 a.m, when it was coming near Kamalapuram, Ammainayakanur, a lorry bearing Reg.No.TN-28-AL-4831 came in a rash and negligent manner and dashed against the deceased's lorry. Thereby, the deceased Raju sustained grievous injuries all over the body and he was taken to the Rajeswari Hospital, Dindigul District. Thereafter, he was shifted to the Government Hospital, Dindigul District, where he died. Therefore, the death was happened during the course of employment and he was working under the first respondent and the said lorry was insured with the second respondent. At the time of accident, the deceased was aged about 45 years and was earning a sum of Rs.6,000/- per month. Thereby, the petitioners are claiming a sum of **Rs.7,00,000/- (Rupees Seven Lakhs only)** towards compensation.

3. The brief averments in the counter filed by the first respondent are as follows:

The averments made in the petition are all false and the



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petition is not maintainable either in law or on facts. The first respondent denied the age, employment and salary of the deceased. The deceased was temporarily appointed as Cleaner. At the time of his appointment, his salary was not fixed and it was informed to him that after satisfying of the work only, it would be decided. The deceased is entitled to 2% Collection Batta in the Lorry Market. There by, he was only earning a sum of Rs.1,600/- per month. Further, the first respondent denied the age of the deceased. At the time of accident, the age of the petitioner is '54' and not '45' as alleged by the petitioners. The amount claimed by the petitioners are too high. Since, the first respondent's lorry is insured with the second respondent, the second respondent is liable to pay compensation to the petitioners. Therefore, the first respondent is no way liable to pay compensation to the petitioners.

4. The brief averments in the counter filed by the second respondent are as follows:

The averments made in the petition are denied as false. The petition is not maintainable either in law or on facts. The age, occupation and the income of the deceased are also denied by the second respondent. Since the deceased was working as Cleaner and he was not an authorised driver of the



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vehicle and the deceased has no license on the date of accident, the second respondent is no way liable to pay any compensation to the petitioners. Hence, the petition is liable to be dismissed as against the second respondent.

5. Before the Tribunal, in order to prove the case of the petitioners, the first petitioner herself was examined P.W.1 and P.W.2 was also examined and marked Exhibits P.1 to P.9. On the side of the respondents, one witness was examined as R.W.1 and 3 documents were marked as Ex.R.1 to R3. After hearing both sides and perusing the records, the Tribunal has awarded a sum of **Rs.3,41,380/- (Rupees Three Lakhs Forty One Thousand Three Hundred and Eighty only)** towards compensation with interest at the rate of 12% p.a and the second respondent was directed to pay the amount within 30 days.

6. Aggrieved over the above said order, the present appeal has been preferred by the appellant/second respondent, on various grounds including alleged substantial questions of law.

7. The learned counsel appearing for the appellant would contend that



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the deceased was working as Cleaner and he was not authorised to drive the vehicle and he has no valid license at the time of accident. Without having valid license, the deceased drove the vehicle and caused accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the petitioners. If at all any compensation is awarded by the tribunal, it has to be paid only by the first respondent. But the Tribunal, without considering the above said facts, awarded the compensation by directing the appellant/second respondent to pay the amount. Therefore, the order passed by the tribunal is liable to be set aside.

8. The learned counsel appearing for the respondents 1 to 5 would contend that the deceased was working as Cleaner cum Driver on the date of occurrence. While he was in the course of employment, the accident was occurred. During the time of the accident, the license of the deceased was misplaced. The first respondent's vehicle was insured with the appellant / second respondent Company. Therefore, the appellant / second respondent is liable to pay compensation to the respondents 1 to 5/ petitioners. The Deputy Commissioner of Labour, Dindigul, in his order, categorically stated that P.W. 2 stated about the license of the deceased that the license of the deceased was



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misplaced at the time of accident. Thereby, he already gave a complaint before the police. Then only, the Deputy Commissioner of Labour, Dindigul, has passed the recent order. Therefore, the present appeal is liable to be dismissed.

9. This Court heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5 and perused the materials available on record.

10. The points for determining in this appeal is *whether any substantial question of law is involved in this case?* and *this appeal has to be allowed or not?*

11. According to the respondents 1 to 5 / claimants, they are the legal heirs of one Raju. When the said Raju was working under the 6th respondent / first respondent as Cleaner cum Driver, he died in the accident out of and in the course of employment. There is no dispute that the deceased was working under the 6th respondent / first respondent and he died out of and in the course of employment.



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12.The sixth respondent / first respondent filed counter by denying the salary. But, at the same time, the deceased was appointed as temporary basis and he was earning only Rs.1,600/- per month. In the counter, it is stated that at the time of appointment of driver as well as the Cleaner, he has to verify the driving license of the employee. Hence, after verifying the driving license only, the deceased was appointed as employee. But, there is no dispute in respect of the quantum of award. The present appeal has been filed by the Insurance Company on the ground that the deceased had no authorised licence to drive the vehicle. In order to prove the case of the petitioner, they have examined P.W.1 and P.W.2 and marked Exs.P.1 to P.9. P.W.2, who is the employee working as driver along with the deceased has deposed about the deceased that the deceased had license and the same was misplaced at the time of accident. Thereby, already, a complaint has been given before the police station. To that effect, he has also marked Ex.P.5, Non Traceable Certificate issued by the police.

13. On the side of the respondents, one witness was examined as R.W.1 and marked Exs.R.1 to R.3. The respondents have not taken any steps to



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examine to concerned RTO (Regional Transport Officer). Therefore, the appellant failed to prove his case. Per contra, the respondents/claimants proved their case through sufficient evidence.

14. The learned counsel appearing for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***Beli Ram Vs, Rajinder Kumar & Another*** reported in ***2020 (2) TN MAC 445 (SC)*** wherein, the Hon'ble Supreme Court has held that it is the duty of the owner to verify whether the driver had valid license or not. In this case on hand, the first respondent in his counter stated that after verifying the license only he used to appoint employees. Therefore, the above said case law relied by the appellant is not applicable to the present case.

15. In this case, the tribunal also after elaborate discuss about the evidence of P.W.2 and Ex.P.5 held that the deceased was holding the license on the date of accident after referring the judgment in the case of ***United India Insurance Company Ltd., Vs. Kamala Mangalal Vayani & Others in C.A.Nos.8221 – 8225 of 2002*** and held that the Insurance Company cannot escape from the liability since the deceased was working under the first



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respondent on the date of accident and the vehicle was insured with the second respondent's Company. Hence, the Insurance Company is liable to pay compensation.

16. This Court after perusing the entire records and the grounds of appeal, there is no substantial question of law involved in this case and grounds raised by the appellant are all factual aspects. Therefore, there is no perversity or infirmity in the order passed by the Lower Authority and the appeal deserves to be dismissed.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the judgment and decree passed by the Deputy Commissioner of Labour, Dindigul, in W.C.No.30 of 2010 dated 31.01.2013, is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

21.03.2024

NCC : Yes/No
Index : Yes / No
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To

1. The Deputy Commissioner of Labour,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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