



C.M.A.(MD).No.836 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.12.2023

PRONOUNCED ON : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.836 of 2011

Iffco Tokyo General Insurance
Co. Ltd.,
No.28 (old No.195) 1st & 2nd Floor,
North Usman Road, T.Nagar,
Chennai 600017.
Through its Manager.

... Appellant

Vs.

1.Chellam
2.S.Baladevi
3.S.Rajakumari
4.Minor.S.Rajasekar
(Minor 4th respondent is rep. By his mother
and next friend, the first respondent)
5.S.Jennath Begam

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, to set aside the award dated 14.03.2011 received on 16.03.2011 made in W.C.No.165 of 2007 on the file of the



C.M.A.(MD).No.836 of 2011

Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R4	: Mr.P.Thiagarajan
For R5	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed as against the judgment and award passed by the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour), Madurai in W.C.No.165 of 2007 dated 14.03.2011 by the appellant insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in W.C.No.165 of 2007.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

The petitioners are the legal heirs I.e. wife and children of the deceased workman namely Sundaram. The first respondent is the employer of the deceased workman and the second respondent is the insurance company. On 03.06.2006, the deceased was travelling in a van-



C.M.A.(MD).No.836 of 2011

goods carrier belonging to the first respondent bearing registration No.TN-63-Y-6060. On 03.06.2006 at about 11.45 p.m., while the said van was plied from Puduvayal to Madurai, along with rice bags, the first respondent driver drove the van in a rash and negligent manner and dashed the van as against a tamarind tree. As a result of which, the deceased who travelled in the said van sustained grievous injuries and died on the spot and he was 53 years old at the time of death. The deceased person was engaged by the first respondent as loadman and also for the purpose of collecting the charges for transporting goods and for canvassing loads. A criminal case was registered by Nachiyapuram Police Station under Section 304A of IPC in Crime No.56 of 2006 as against the driver of the first respondent. In view of the death of the deceased, the petitioners have filed a claim petition seeking compensation of Rs.2,85,360/-.

4.The second respondent had filed a counter and emphatically denied that there was no employer and employee relationship between the first respondent and the deceased and hence the claim itself is not maintainable before the Commissioner of Workmen Compensation. It is



C.M.A.(MD).No.836 of 2011

further contended that the deceased actually travelled in a goods carrier as an unauthorized/gratuitous passenger only and in view of the fact that such a class of passenger is not covered by the policy a claim under the Motor Vehicles Act is not maintainable. Further this claim is filed fraudulently under the Workmen's Compensation Act by stating that the deceased was actually working under the first respondent. It is also contended that there is no negligence on the part of the driver of the goods carrier bearing Registration No.TN-63-Y-6060 and the accident had occurred only due to the negligence of the deceased himself. Having travelled in the said vehicle as unauthorized passenger without following the traffic rules in any event the claim of Rs.2,85,360/- though restricted, is not tenable for the death of the deceased without concrete proof of employment with the first respondent.

5.However, the learned Commissioner had admitted the case in W.C.No.165 of 2007 and framed four issues and examined P.W.1 and marked Ex.P1 to Ex.P5 on the side of the petitioners and on the side of the respondents, examined R.W.1 and R.W.2 and marked Ex.R1 to Ex.R5. The learned Tribunal having scrutinize various documents



C.M.A.(MD).No.836 of 2011

produced before it and also considering the evidence deposed before the same and on the basis of arguments putforth by both the parties, came to a conclusion that the deceased was the workman of the first respondent and he died only during the course of employment. That apart, on the basis of G.O.Ms.No.47 Labour and Employment Department dated 01.08.2003 the learned Tribunal fixed the monthly salary of the deceased equivalent to that of loadman at Rs.3,104 + monthly batta of Rs.585/- and fixed the monthly salary as Rs.3,689/-. The Compensation was calculated by considering the age of the deceased I.e., 53 years and fixing the relevant factor as 142.88 and the compensation was arrived is as under:-

Head	Compensation awarded
(I)Monthly Salary:	Rs.3,689/-
(ii)Age and Relevant Factor:	53, 142.88
(iii)Compensation Calculation:	Rs.3,689x50%x142.88 = Rs.2,63,173/-
(iv)Funeral Expenses:	Rs.2,500/-
Total compensation awarded:	Rs.2,65,173/- with interest @ 12% from the date of the claim until the realization and costs.

6.That apart the learned Commissioner concluded that since the



C.M.A.(MD).No.836 of 2011

van involved in the accident was insured with the second respondent insurance company on behalf of the first respondent, the compensation should be paid by the second respondent.

7.Challenging the same, the second respondent/insurance company has filed this Civil Miscellaneous Appeal contending that the deceased could never be considered as workman under the provision of Workmen Compensation Act as the deceased happened to be an Accountant under the first respondent and such a class of person cannot be deemed to be a workman under Section 2(1)(n) of the Workmen Compensation Act and the schedule therein. It is also submitted by the learned counsel Mr.S.Srinivasa Raghavan appearing for the appellant/second respondent that even in the First Information Report and other criminal court records, the deceased was stated to be an Accountant only and hence, the learned Tribunal ought to have concluded that he is an Accountant and ought to have arrived at a decision that he is not at all workman of the first respondent. It is emphatically contended by the learned counsel for the appellant/second respondent that Section 147 of Motor Vehicles Act is very clear that except driver, cleaner, loadman and owners or



C.M.A.(MD).No.836 of 2011

authorized representative of the goods confined in the goods carrier, no one is permitted to travel in the goods carrier and the insurance company need not indemnify the first respondent. It is further argued that the authorities under the Motor Vehicles Act, 1988 especially those under Section 147 and 149 of the Act, are competent authorities to deal with the issue. The claimants ought not to have invoked the provisions of Workmen's Compensation Act, 1923. It is further contended by the learned counsel for the appellant/second respondent that the seating capacity of the vehicle involved in the accident is 1+1 and hence, the Accountant of the first respondent is not permitted to travel as a passenger in the goods vehicle. Thereby, he sought for allowing the appeal.

8.Per contra the learned counsel appearing for the respondents 1 to 4, Mr.P.Thiagarajan submitted that the appellants failed to prove that the deceased person was not a workman of the first respondent. That apart the second respondent insurance company have taken the defence that the deceased person was an Accountant under the first respondent and such a class of persons cannot be deemed to be a workman under Section



C.M.A.(MD).No.836 of 2011

2(1)(n) of Workman's Compensation Act and schedule therein and that such an argument is not sustainable. He further submitted that the second respondent's arguments that the learned Tribunal erred by considering an Accountant who had travelled in the goods vehicle as loadman will not hold good for the reason that if the second respondent wanted the learned Tribunal to have considered the deceased as the Accountant of the first respondent then the second respondent ought to have proved the same in terms of Section 101 of the Indian Evidence Act, 1872. On failing to prove the same in accordance with law, the second respondent's arguments that the deceased person was only an Accountant not a loadman cannot be sustained. He further submitted that though the first respondent employer was set exparte before the learned Tribunal nothing prevented the second respondent from examining the first respondent as respondent side witness to prove that the deceased had never been either a workman or a loadman in terms of the counter filed before the learned Tribunal or that the deceased worked only as the Accountant in terms of ground of appeal preferred by the second respondent. But such an exercise has not been done by the second respondent and on that ground alone, this appeal is liable to be dismissed.



C.M.A.(MD).No.836 of 2011

WEB COPY

9. In the instant case, the pertinent question which has to be decided is whether the learned Tribunal is justified in compensating the petitioner by holding that the deceased namely Sundaram had been the loadman of the first respondent vehicle bearing Registration No. TN-33-Y-6060, when he died in an accident on 03.06.2006 at about 11.45 p.m., while he was travelling in the aforesaid vehicle and when the same dashed against the tamarind tree at the negligent driving of the driver who drove vehicle ?

10. This claim petition has been filed before the Commissioner of Workman Compensation under the Workmen's Compensation Act under Section 22 of the aforesaid Act. The liability to pay compensation under Workman's Compensation Act, 1923 herein after called as 'the Act' arises in the event of accidents during the course of employment of a workman. For the purposes of this Act, the term 'workman' has been defined under Section 2(1)(n) of the Act and as per Section 2(1)(n) of the Act, a person who is employed in casual basis and who is employed otherwise than for the purposes of the employer's trade or business is not a workman within



C.M.A.(MD).No.836 of 2011

the meaning of the Workman Compensation Act. Thus the two ingredients which disentitle a person to be termed as a workman are:

(i) he must be employed on actual basis;

(ii) he must be employed otherwise than for the purposes of employer's trade or business. On a careful scrutiny of the language employed in the proviso even if one of the two ingredients is absent, such a person can be termed as a workman.

11. In the instant case, the deceased Sundaram died while he was travelling in a goods carrier/van bearing registration No.TN-33-Y-6060 carrying rice bags from Pondicherry to Madurai. The first respondent employer had remained conspicuously exparte before the learned Tribunal and before this Court. The second respondent insurance company which took the defence before the learned Tribunal that there were never been an employer and employee relationship between the first respondent and deceased Sundaram had taken a U turn and has filed this appeal and has admitted that the deceased was an Accountant with the first respondent.



C.M.A.(MD).No.836 of 2011

12. However, a critical perusal of the award passed by the learned Tribunal would reveal that the second respondent had miserably failed to prove neither the deceased Sundaram was not at all an employee of the first respondent nor that he served only as an Accountant with the first respondent. Whoever wants any Court to give judgment on the existence of any fact which he asserts, they must prove that fact exists. However, the second respondent who wanted this Court to give judgment on his submission that the deceased Sundaram has been was only the Accountant never took any diligent steps either by examining the first respondent employer or any other person before the learned Tribunal to prove that the deceased had never been an employee or had been just an Accountant with the first respondent. That apart having admitted the fact that the deceased person had been the Accountant in the grounds of appeal. I find no irregularities in the presumption made by the learned Tribunal that had the deceased being an Accountant, he would have served only by sitting in the office and there would not have been any occasion to travel in the goods carrier in which rice bags were transported. The fact that the deceased Sundaram travelled from Pondicherry to Madurai in the goods carrier carrying rice bags at the time



C.M.A.(MD).No.836 of 2011

of accident would suffice to prove that the deceased not only looked into the matter of accounts but also he served as the loadman who normally loaded and unloaded the goods but also who got engaged in canvassing loads for the purpose of business of the first respondent on the basis of the proof affidavit of P.W.1.

13.That apart the argument of the learned counsel for the appellant herein is that the avocation of the Accountant will not be covered under the definition of 'employee' under Section 2(d)(d) of Employees Compensation Act, 1923 and those covered under schedule 2 of the aforesaid Act. Section 2(1)(d)(d) and 2(c) is extracted as follows:-

*“(d)(d) “employee” means a person, who is -
(c)a person recruited as driver; helper, mechanic, cleaner
or in any other capacity in connection with a motor vehicle.”*

14.The deceased Sundaram had travelled in the goods carrier belonging to the first respondent employer and in accordance with evidence deposed by P.W.1, he travelled as the loadman, who would be covered under the category of helper in connection with the motor vehicle who died in the course of journey from Puducherry to Madurai



C.M.A.(MD).No.836 of 2011

carrying rice bags. Even assuming that the deceased Sundaram would not be covered under the category of employee as defined under Section 2(1)(d)(d) and (c), it is pertinent to mention that the aforesaid Section has been inserted by Act 45 of 2009 with effect from 18.01.2010. Before 18.01.2010, the definition of Workman was covered under the Workmen's Compensation Act, 1923.

15. On careful perusal of definition of workman as provided under Section 2(1)(n) of Workmen's Compensation Act, the words “other than the person whose employment is of casual in nature or who is employed otherwise than for the purposes of the employers trade or business” stood omitted by the amendment Act 2000 with effect from 08.12.2000, where after the workman's definition came to be enlarged and the person employed in any such capacity as specified in schedule 2 has to be termed as workman. The alleged accident took place on 03.06.2006 and the definition of workman as given in Section 2(1)(n) reads as under:-

“(n) ‘workman’ means any person who is-

(I).....

(ia)(a).....

(b).....



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C.M.A.(MD).No.836 of 2011

(c).....

(c).....

(ii)employed in any such capacity as is specified in Scheduled II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.”

16.No doubt vide amendment Act, 2000, definition of “workman” came to be amended, thereby words “other than the persons whose employment is of casual in nature or who is employed otherwise than for the purposes of the employers trade or business” were deleted, meaning thereby at the time of alleged accident, the deceased Sundaram was the workman and as such, the respondents/claimants/legal heirs/dependants rightly filed petition under Section 22 of Workmen Compensation Act and it cannot be said that the learned Tribunal below misconstrued and misinterpreted the provisions of Section 2(1)(n) of the Act.



C.M.A.(MD).No.836 of 2011

17.Hence, I have no hesitation to hold that there is no illegality and infirmity in the award passed by the learned Tribunal.

18.In view of the same, this Court is no inclined to interfere with the award by the learned Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Commissioner of Workmen Compensation,
(Deputy Commissioner of Labour), Madurai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.836 of 2011

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.836 of 2011

05.01.2024