



C.M.A.(MD).No.990 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 09.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.990 of 2012

and

M.P.(MD)No.1 of 2012

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Thiruvarur

... Appellant

Vs.

1.Srirangammal

2.Minor.R.Chandru

3.Minor.R.Karthick
(Minors 2nd and 3rd respondent rep.by their
Mother and natural guardian 1st respondent
Tmt.Srirangammal)

4.Mariyammal

5.P.Murugappan

6.Minor Akilandeswari
(Minor 6th respondent rep.by their

1/10



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Mother and natural guardian 4th respondent
(Tmt.Mariyammal)

7.P.Selvaraj

8.Hajia Natchiyar

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the award of Rs.4,33,060/- (Rupees Four Lakhs Thirty Three Thousand and Sixty only) passed in W.C.No.313 of 2009, dated 09.04.2012, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Trichirappalli.

For Appellant	: Mr.C.Jawahar Ravindran
For R1 to R5	: Mr.N.Sudhagar Nagaraj
For R7 & R8	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/third respondent, challenging the compensation awarded on certain counts by the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), at Trichirappalli in W.C.No.313 of 2009 dated 09.04.2012.



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2.For the sake of convenience, the parties are arrayed herein as per the rank in W.C.No.313 of 2009.

3.The factual matrix of the present case, briefly stated, are as under:-

This is a fatal case. The first petitioner is the wife of the deceased M.Ramar and the petitioners 2 and 3 are the minor children of the deceased Ramar, the petitioners 4 and 5 are parents of the Ramar and the sixth respondent is the minor sister of the deceased. On 10.08.2009, while the said Ramar was driving the lorry bearing registration No.TN-50-D-2023 and was proceeding from Musiri to Trichy, at Aiyampalayam, the said lorry dashed as against another lorry bearing registration No.TN-30-C-8689, which came in the opposite direction. As the result of collision, the deceased sustained fatal injuries all over the body and was admitted in Government Hospital, Musiri for first aid and thereafter, shifted to Government Headquarters hospital, Tiruchirappalli and he died there. At the time of accident, he was 26 years old and according to the petitioners, he was drawing a salary of Rs.5,000/- per month along with batta and other allowance. Musiri Police registered a



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case in Crime No.444 of 2009 with respect to the said accident. Seeking a compensation of Rs.9,00,000/- for the death, the petitioners have filed the claim petition.

4.The first respondent is the employer of the deceased, the second respondent is the owner of the vehicle as per the insurance policy and the third respondent is the insurance company with which the vehicle was insured. The second respondent had filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Commissioner has framed three issues. One witness was examined on the side of the petitioner as P.W.1 and Ex.P1 to Ex.P5 were marked. One witness R.W.1 was examined and Ex.R1 to Ex.R3 were marked. The respondents 1 and 2 were called absent and set exparte. On the basis of the oral and documentary evidence and arguments submitted by respective parties, the learned Tribunal concluded that the deceased died during the course of his employment as the driver of the first respondent. The learned Tribunal arrived at a conclusion that Ex.R1 RC book of the lorry involved, which would



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reveal that the second respondent had sold the said lorry bearing registration No.TN-50-D-2023 on 24.06.2009 in favour of the first respondent. Hence, the learned Tribunal came to a conclusion that the deceased was working under the first respondent during the course of accident. Though the petitioners claimed that the monthly income of the deceased was Rs.5,000/- per month, on the basis of Minimum Wages Act fixed by the Tamil Nadu Government, the learned Commissioner fixed the monthly income of the deceased driver as Rs.3466/- + Rs.1,268/- (DA) and arrived at Rs.4,734/- per month. However, under Section 4 of maximum income as fixed by the Workmen's Compensation Act being Rs.4,000/-, the learned Tribunal fixed the monthly income as Rs.4,000/-. On the basis of Ex.P5 i.e. Driving licence, the learned Commissioner decided that the deceased was 26 years old at the time of accident and calculated the head of loss of dependency as Rs.4,30,560/- $[50/100 \times 4000 \times 215.28 \text{ (relevant factor)}]$. Further the learned Tribunal awarded a sum of Rs.2,500/- towards funeral expenses. Hence, the total compensation awarded by the learned Tribunal is Rs.4,33,060/-.

6.That apart the learned Commissioner on considering Ex.P3, insurance policy of the vehicle involved which stood in the name of the



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second respondent and the RC book, which was marked as Ex.R1 arrived at a conclusion that though the ownership of the vehicle has been transferred in favour of the first respondent by the second respondent. The factum of transfer of ownership was not intimated to the third respondent insurance company. However, the currency of the policy prevailed at the time of the accident. Hence, on technical grounds, the third respondent insurance company should not refuse to indemnify the first respondent and directed the third respondent to pay the same.

7.Challenging the said award, the third respondent insurance company had filed this Civil Miscellaneous Appeal questioning the basis on which the learned Commissioner concluded that the deceased had been the workman of the first respondent as per Section 2(1)(n) of the Workmen Compensation Act.

8.The learned counsel appearing for the appellant vehemently submitted that the learned Commissioner ought not to have directed the third respondent to indemnify the second respondent and on the other hand, ought to have passed an order of pay the award amount to the



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petitioners and recover from the second respondent and pressed this Court to pass the order accordingly. The Hon'ble Apex Court in the case of ***Pushpa Leela and others v. Shakunthala and Others*** reported in **2011 2 CTC 693** has dealt with similar case and held as follows:-

“Original owner sold vehicle to X, but X took insurance in the name of original owner without effecting transfer of entries in his name. Vehicle met with accident during the coverage period. Insurance company held liable.”

9.Yet another case of Karnataka High Court in the case of ***Manager, United India Insurance Company Ltd., v. Mahesh*** reported in **2009 ACJ 2804 (KAR)** has dealt with the similar lines and the same is extracted as follows:-

“Truck has dashed against a stationary minibus due to its rash and negligent driving and loader in the truck sustained injuries. Commissioner had allowed compensation to injured workman against insurance company. Appeal was filed by insurance Co., contending that insured has transferred his vehicle to transferee and no intimation was given to the insurance company either by the insured or transferee owner; insurance workman is an employee of transferee and not of insured and insurance company cannot



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indemnify transferee in whose favour it has not issued any policy. Insurance Co., should not be benefitted or immuned from liability for the mistake committed by the insured and injured cannot be denied his right to recover compensation from the insurance company. Insurance Company could not be directed to indemnify transferee owner. Insurance Company was directed to make payment to the claimant and recover the same from the insured or transferee owner.”

10.Fully following the said discussed supra, I do not find any reason to interfere in the order passed by the learned Commissioner.

11.Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

09.01.2024

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



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To

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



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L.VICTORIA GOWRI, J.

Mrn

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