



C.M.A.(MD).No.1716 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1716 of 2013

The Oriental Insurance Company Limited,
Namakkal.

... Appellant/2nd Respondent

-VS-

1. Muniyammal
2. Minor Shanmugasundaram
3. Minor Karthik
4. Minor Kanaga Lakshmi

... Respondents 1to 4/Petitioners 1 to 4

(Minor respondents 2 to 4 are represented by
their Mother and Guardian 1st Respondent
Tmt.Muniyammal)

5. Thiru. Thiyagarajan,
Proprietor,
Sivakami Transports,
84, Mohanoor Road,
Namakkal – 637 001

... 5th Respondent/1st Respondent

(5th Respondent remained *ex parte*
before the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the
Workmens' Compensation Act, against the award made in W.C.No.17 of



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2009, dated 30.07.2013 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.V.B.Sundhareshwar
for R1 to R4

: No appearance – for R5

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.17 of 2009, dated 30.07.2013, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli, wherein the respondents 1 to 4 herein have filed the petition claiming compensation for the death of Rajendran, who died during the course of employment under the 5th respondent/1st respondent herein.

2. The Tribunal has awarded a sum of Rs.3,45,040/- (Rupees Three Lakhs Forty Five Thousand and Forty only) towards compensation. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant.



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

The deceased Rajendran was working as a driver under the employment of the 5th respondent/1st respondent and he was earning a sum of Rs.5,500/- (Rupees Five Thousand and Five Hundred only) per month. While so, on 01.10.2007, when he was proceeding in the Lorry bearing Registration No.TN-28-P-8939, due to work load and depression, he was affected by Malariya fever and he was admitted in the hospital. However, on 05.10.2007, he died in the hospital at Hyderabad at Andra Pradesh. The deceased died in the course of employment due to work stress.

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

The petition is not maintainable either in law or on facts. The deceased was working as Lorry driver under the 5th respondent/first respondent's vehicle and he was earning a sum of Rs.5,500/- per month are strictly to be proved by the petitioners. The averments that due to the continuous work of stress and strain, the deceased was affected by Malaria and Cardiac



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respiratory arrest and died on 05.10.2007 is denied as false. Therefore, the cause of death is not related to the employment and the deceased did not die due to the occupational disease. Therefore, the second respondent is in no way liable to pay compensation to the petitioners.

5. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and documents Ex.P.1 to P.8 were marked. On the side of the respondents, RW.1 was examined and no documents were marked. The Tribunal after hearing both sides awarded a sum of Rs.3,45,040/- (Rupees Three Lakhs Forty Five Thousand and Forty only) towards compensation by directing the appellant/second respondent/Insurance Company to pay the amount to the respondents 1 to 4/petitioners. As against the award passed by the Tribunal, the present appeal has been filed by the appellant/second respondent.

6. The learned counsel appearing for the appellant would contend that the deceased died during the course of employment but his cause of death is not related to the work and thereby the deceased had not died out of the employment and thereby the appellant/second respondent is in no way liable



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to pay compensation to the petitioners. The petitioners have failed to prove that the death was due to the Malaria and Cardiac respiratory arrest because of stress and strain. The petitioners have not examined any Doctor to prove the cause of death but the Tribunal has failed to consider the above said aspect and simply awarded compensation. Therefore, the award passed by the Tribunal is liable to be set aside.

7. In support of his contention, the learned counsel appearing for the appellant has relied upon the following judgments:

1. 2006 (2) TNMAC Page 255 (SC) – (Sakuntala Chandrakant Shreshti vs- Prabhakar Maruti Garvali).

2. 2006 (2) TNMAC Page 461 (SC) – (Jyothi Ademma Vs.Plant Engineer).

3. 2008 (1) ACC Page 359 (MHC) – (M/s.Oriental Insurance Company Limited Vs.Chinnapillai).

4. 2010 (1) TNMAC Page 131 (SC) – (Roshida Haroon Kupurade Vs.OIC).

5. 2010 (1) ACC Page 231 (MHC) – (M/s. National Insurance Company Limited Vs-Santhamani).



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6. 2010 (2) TNMAC Page 377 (MHC) – (S.Mahalakshmi Vs. Tamil Nadu Cenents Corporation).

7. 2011 (2) ACC Page 398 (HPHC) – (Ram Dev Puri Vs.Trishla Devi).

8. The learned counsel appearing for the respondents 1 to 4 would contend that the deceased was working as a driver under the employment of the 5th respondent/1st respondent and the vehicle was insured with the appellant/2nd respondent/Insurance Company, on the date of incident. The deceased died during the course of employment when he was driving the vehilce to Hyderabad at Andra Pradesh. Due to his work load and stress and strain, he was affected by Malaria and thereafter died due to cardiac respiratory arrest. Therefore, the death was occurred during the course of employment and thereby the respondents are liable to pay compensation to the petitioners. The Tribunal after taking into consideration, after elaborate discussion, correctly fastened the liability as against the appellant/second respondent and thereby, the present appeal is liable to be dismissed.



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9. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, the following substantial question of law was framed:

1) Whether the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Tirunelveli is correct that the malarial fever may be termed as occupational disease and because of the malarial fever there was stress or strain, which caused the death of the workman?

10. In this case, there is no dispute that the deceased was working under the employment of the 5th respondent/1st respondent and the 5th respondent's vehicle was insured with the second respondent.

11. According to the respondents 1 to 4/petitioners, the deceased was died while he was working as driver under the 5th respondent/1st respondent and when the vehicle was in Hyderabad at Andhra Pradesh the deceased was affected by Malaria fever due to work load and stress and strain and thereby he was admitted in the hospital and thereafter he died.



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12. According to the appellant/second respondent, the deceased died due to Malaria fever and that the cause of death is not related to the work and thereby they are not liable to pay compensation to the petitioners.

13. It is an admitted fact that the deceased was working under the 5th respondent/1st respondent on the date of death. There is no proof that the deceased was already affected some other disease. The deceased died due to Malaria fever due to stress and strain. According to the petitioners, the deceased died due to stress and strain and he was affected by Malaria fever. R.W.1, during the cross examination admitted the fact that the deceased was working under the 5th respondent/first respondent and he died due to work load and continuous work. Further, the evidences adduced by the petitioners show that the deceased continuously travelled for 10 to 20 days due to his nature of work. It shows that deceased was under stress and continuous work and thereby this Court can safely held that the deceased died due to the stress and strain and thereby affected with malaria fever and also died due to stress and strain.



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14. The learned counsel appearing for the appellant relied upon the following judgments:

1. 2006 (2) TNMAC Page 255 (SC) – (Sakuntala Chandrakant Shreshti vs- Prabhakar Maruti Garvali).

2. 2006 (2) TNMAC Page 461 (SC) – (Jyothi Ademma Vs.Plant Engineer).

3. 2008 (1) ACC Page 359 (MHC) – (M/s.Oriental Insurance Company Limited Vs.Chinnapillai).

4. 2010 (1) TNMAC Page 131 (SC) – (Roshida Haroon Kupurade Vs.OIC).

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6. 2010 (2) TNMAC Page 377 (MHC) – (S.Mahalakshmi Vs. Tamil Nadu Cenents Corporation).

7. 2011 (2) ACC Page 398 (HPHC) – (Ram Dev Puri Vs.Trishla Devi).

15. On a careful perusal of the judgments, it is clear that the respondents 1 to 4/ petitioners have to prove that the death was due to stress



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17. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

07.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour), Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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