



C.M.A(MD)No.699 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.07.2024

CORAM

**THE HONOURABLE MR JUSTICE SUNDER MOHAN**

**C.M.A(MD)No.699 of 2010**

The Manager,  
The New India Assurance Co., Ltd.,  
674-Periakulam Road,  
Theni.

... Appellant/Respondent 3

Vs.

1.Tmt.K.Binnyammal  
2.Tmt.G.Jeyamani  
3.Minor Gopi  
4.Minor Nathiya

...Respondents 1to4/  
Petitioners

(R3&R4 minors represented by  
their mother and guardian  
respondent 2)

5.K.Nallathambi  
6.P.Umadevi

...Respondent 5/Respondent1  
...Respondent 6/Respondent2

Civil Miscellaneous Appeal is filed under Section 30 of  
Workmen Compensation Act, against the award dated 31.12.2009  
received by the appellant on 10.02.2010 and made in W.C.No.39 of



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2007 on the file of the Workmen Compensation Commissioner and  
Deputy Commissioner of Labour, Dindigul.

|               |                |
|---------------|----------------|
| For Appellant | :Mr.J.S.Murali |
| For R1 to R4  | :No appearance |
| For R5&R6     | :No appearance |

### **JUDGMENT**

The Civil Miscellaneous Appeal is filed challenging the  
award passed by the Workmen Compensation Commissioner and  
Deputy Commissioner of Labour, Dindigul.

2.The respondents No.1 to 4 are the claimants before the  
Commissioner. The fifth respondent is said to be the employer of  
the deceased employee and the sixth respondent is said to be the  
insured. Though notice was sent to the fifth and sixth respondents,  
none have entered appearance. The respondents No.1 to 4 are  
represented by the learned counsel. However, there is no  
representation for the respondents 1 to 4 on 16.11.2022,  
21.04.2023, 08.08.2024 and 12.08.2024.



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3.The learned counsel for the appellant submitted that the sixth respondent is the policy holder and even as per the claim petition, the deceased was working under the fifth respondent with whom the appellant has not entered into any contract. The finding of the Commissioner that the accident took place during the course of employment, is without any basis and hence, prayed for setting aside the award.

4.The instant appeal was admitted on the following substantial question of appeal:

*“1.Whether the Commissioner is justified in fastening the liability on the appellant without considering the plea of the appellant that there is no privity of contract between the appellant and the employer of the deceased?*

*2.Whether the finding of the Commissioner that the defenses available to the insurer under Section 149(2) of the Motor Vehicles Act is not available to the claim under Workmen Compensation Act is sustainable in law?*



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*3. Whether the default interest is payable from the date of accident or from the date of award? ”*

5.This Court has carefully considered the submissions made and also perused the materials available on record.

6.The fifth respondent, who is said to be the employer of the appellant remained ex-parte before the Commissioner. The sixth respondent also remained ex-parte before the Commissioner. There is no privity of contract between the appellant and the fifth respondent, employer of the deceased. The fifth respondent is said to have purchased the car from the sixth respondent. However, there is no document produced on the side of the claimants to substantiate the said fact. In any event, the Registration Certificate stands in the name of the sixth respondent, who is the insured. Therefore, this Court is of the view that the Commissioner ought not to have fastened the liability on the appellant, when there is no privity of contract between appellant and the fifth respondent. The



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first substantial question of law is answered accordingly. Since the appeal has to succeed in view of the above answer to the first question of law, this Court is not going into the other questions of law.

7.In view of the above, the Civil Miscellaneous Appeal is allowed. The appellant is permitted to withdraw the award already deposited by filing suitable application before the Commissioner.  
No costs.

12.08.2024

NCC:Yes/No  
Index:Yes/No  
Internet:Yes/No  
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**SUNDER MOHAN, J.**

Ns

To

1.The Workmen Compensation Commissioner  
and Deputy Commissioner of Labour,  
Dindigul.

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

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