



C.M.A.(MD)No.1936 of 2013

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Dated: 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1936 of 2013

and

M.P(MD)No.2 of 2013

The Branch Manager,
M/s.Oriental Insurance Company Ltd.,
No.6, Polly Towers,
NO.1, 4th Floor, Ralak Street,
Saithapettai, Chennai-15.

.. Appellant

Vs.

1.Sagunthala

2.A.Thamizponmzhi

3.K.Balamurugan

.. Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the order passed in W.C.No.208 of 2007 dated 15.10.2012 on the file of the Deputy Commissioner for Workmen's Compensation, Thiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Sudhagar Nagaraj for R3



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: No appearance for R1 & R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed by the Deputy Commissioner for Workmen's Compensation, Thiruchirappalli, in W.C.No.208 of 2007 dated 15.10.2012 wherein the respondents 1 & 2 herein have filed a claim petition for the death of one Ponmanaselvan, who died during the course of employment under the third respondent herein. The respondents herein filed a petition for compensation before the Tribunal seeking compensation of Rs. 6,00,000/-alleging that they are the legal heirs of the deceased Ponmanaselvan, who was died in an accident and he was working as a driver under the third respondent. The tribunal awarded a sum of Rs. 4,47,920/- towards compensation. Being aggrieved by the order of the Tribunal, the insurance company has preferred this appeal.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.



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3. The brief averments of the petition filed before the Tribunal are as follows:

The petitioners are the mother and sister of the deceased. According to the petitioners, on 16.01.2007, when the deceased Ponmanaselvan was driving the third respondent's vehicle Ambassador Car bearing Registration No.TN49-Y-8397 near Vellanur on the way to Lalgudi, met with an accident and died on the spot. He was 21 years old at the time of accident and he was earning Rs.4,500/- per month and thereby, the petitioners claiming compensation of Rs.6,00,000/-.

4. According to the first respondent, who is the owner of the vehicle, the deceased was working under his employment and on 16.01.2007, he died while he was driving the vehicle. The said vehicle was insured with the second respondent insurance company and thereby, the second respondent is liable to pay the compensation to the petitioners.

5. The brief averments of the counter filed by the second respondent are as follows:

According to the second respondent/insurance company, the



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deceased has no valid license on the date of accident and thereby the first respondent violated the conditions of the policy, therefore, the second respondent is not liable to pay the compensation to the petitioners.

6. Before the trial Court, in order to prove the case, on the side of the petitioners, PW1 was examined and Ex.P1 to Ex.P6 were marked. On the side of the second respondent, RW1 & RW2 was examined and Ex.R1 & Ex.R2 were marked.

7. After evaluating the oral and documentary evidences adduced on either side, the tribunal has awarded a sum of Rs.4,47,920/- towards compensation to be paid by the second respondent/insurance company. Aggrieved over the same, the present appeal has been preferred by the second respondent/insurance company on various grounds including the following Substantial Questions of Law:

(i) Whether the Commissioner has failed to hold that the deceased Ponmanaselvan was not having driving license at the time of accident?

(ii) Whether the Commissioner is right in holding that the Workmen's Compensation Act does not mandate that the employed driver



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should possess the valid driving license in terms of the Motor Vehicles Act?

8. The learned counsel appearing for the appellant would contend that the driver of the vehicle had no valid driving license on the date of accident. It is the duty of the petitioner to prove that the deceased had valid license to drive the vehicle, but to prove the same, no document filed and no witness was examined. The first respondent/owner of the vehicle did not produce the copy of the driving license of the deceased. But, the tribunal, without considering the same, however granted compensation and directed the second respondent to pay the compensation to the petitioners. Therefore, the order passed by the tribunal is liable to be set aside.

9. The learned counsel appearing for the respondents would contend that at the time of giving employment to the deceased, after verifying all the records, only the third respondent employed the deceased as driver. The second respondent did not examine any persons to prove his contention and they only relied upon the investigation report and the



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investigation officer was appointed by the insurance company. He is none other than the employee of the insurance company. Therefore, based on the investigation report of the investigation officer only, they stated that the deceased has no valid license on the date of accident. The tribunal, after consideration of all the facts and circumstances, correctly awarded the compensation for a sum of Rs.4,47,920/-. Since the first respondent insured his vehicle with the second respondent, the second respondent is liable to pay the compensation and he has not examined any official from the RTO office to prove his contention. Therefore, the order passed by the tribunal is in accordance with law and the same is to be confirmed and the present appeal is liable to be dismissed.

10. This Court has considered the submissions made by either side counsel and perused the materials available on record.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the following Substantial Questions of Law were framed:

(i) Whether the Commissioner has failed to hold that the deceased



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Ponmanaselvan was not having driving license at the time of accident?

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(ii) Whether the Commissioner is right in holding that the Workmen's Compensation Act does not mandate that the employed driver should possess the valid driving license in terms of the Motor Vehicles Act?

Substantial Question of Law No:1

12. In this case, the appellant/second respondent raised the plea that the deceased driver had no valid license to drive the vehicle and hence, the second respondent is not liable to pay the compensation to the petitioners. In this case, there is no dispute in respect of the relationship of the parties as employer and employee and the deceased also died during the course of employment. The only contention raised by the appellant is the deceased had no driving license on the date of accident. In this context, the first respondent/owner of the vehicle is the only competent person to speak about the license of the deceased Ponmanaselvan. But he has not disputed the license of the deceased and he himself employed the deceased as driver and thereby, there is a presumption that the driver had license. To prove the same, the second respondent did not examine any official from



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the RTO office concerned. Further appellant insurance company failed to issue notice either to the owner of the vehicle or to the petitioners to produce the copy of the license. Therefore, without any evidence, the insurance company cannot say that the deceased had no valid driving license on the date of accident. The tribunal relied on the judgment of Jammu and Kashmir High Court reported in 2006(109)FLR23 (J&K) in the case of United India Insurance Company Ltd., vs. Mst. Noora, wherein the High Court of Jammu and Kashmir held that if the driver is employed under the Workmen's Compensation Act, the provision of the said Act nowhere prescribed that he should possess a valid driving license, as in terms of mandate of Motor Vehicles Act.

13. Per contra, the learned counsel for the appellant/insurance company relied upon the judgment of the Hon'ble Supreme Court in the case of ***Beli Ram v. Rajinder Kumar*** reported in **2020(2)TNMAC 445 (SC)**.

14. On careful perusal of the judgment it is clear that the said case law will not be applicable to the present facts of the case. Because in that



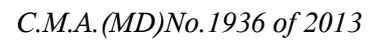
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case, already the driver had valid license and the same was not renewed in time. But in the case on hand, the insurance company had taken up the only plea that the deceased had no valid driving license but the owner has not denied the license of the deceased and thereby the above facts of the case are distinguished.

15. In view of the above said discussion, this Court is of the opinion that the insurance company has failed to prove that the deceased had no license on the date of accident and the tribunal correctly held that the deceased was holding the license on the date of accident. Accordingly, the first Substantial Question of Law is answered.

16. Substantial Question of Law No.2:

The Commissioner based on the judgment of the Jammu and Kashmir High Court held that the Workmen's Compensation Act does not mandate that the employee driver, who possess valid license in terms of the Motor Vehicles Act. But the Hon'ble Supreme Court in the judgment stated supra, clearly stated that in an appeal arising out of Workmen's Compensation Act, the possession of the driving license of a driver is



17. In view of the above discussions and answers to the Substantial
ons of Law, this Civil Miscellaneous Appeal fails and deserves to be
sed and accordingly, dismissed. No Costs. Consequently, connected
laneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJJ



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To

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1. The Deputy Commissioner for Workmen's Compensation,
Thiruchirappalli.

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



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P. DHANABAL, J.

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