



C.M.A.(MD).No.1965 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1965 of 2013

and

M.P(MD) No.1 of 2013 and M.P(MD) No.1 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
Shoba TSM Complex,
Railway Station Road,
Opposite Railway Station,
Palakkad – 678 001.

... Appellant/2nd Respondent

-VS-

1. Tmt. Manjula Mary
2. Minor M.Kiral Packiyam

... Respondents 1 and 2 / Petitioners

(Minor 2nd Respondent represented by
her mother and guardian 1st Respondent
Manjula Mary)

3. P.Anbu
(3rd Respondent remained ex-parte
before the Lower Court)

... 3rd Respondent/1st Respondent



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PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the award made in W.C.No.110 of 2009, dated 30.09.2013, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Dindigul.

For Appellant : Mr.C.Karthik
For R1 and R2 : Mr.D.Venkatesh
For R3 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant to set aside the order passed by the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Dindigul, in W.C.No.110 of 2009, dated 30.09.2013.

2. According to the appellant, the deceased was traveling as gratuitous passenger in the third respondent vehicle and thereby the appellant is not liable to pay any compensation to the petitioners. The respondents 1 and 2/ petitioners instead of approaching the Motor Accident Claims Tribunal, filed the Workmen Compensation petition before the Tribunal. The Respondents 1



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and 2 have not established the fact that the deceased was working under the employment of the first respondent. Without considering the same, the Tribunal has awarded a sum of Rs.3,96,620/- (Rupees Three Lakhs Ninety Six Thousand Six Hundred and Twenty only) as compensation. Therefore, the learned counsel for the appellant prayed this Court to set aside the award passed by the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Dindigul.

3. According to the respondents 1 and 2 they are the legal heirs of the deceased Maria Francis, who was working as load man in the vehicle bearing Registration No.TN-57-M-4016 belongs to the 3rd respondent/1st respondent insured with the Appellant/second respondent. On 15.02.2009 at about 00.15 hours when the vehicle was proceeding near Soudaswari Mill Chinnalapatty, the driver of the lorry had driven the vehicle in a rash and negligent manner applied sudden break, due to which, the loadman Maria Francis who was travelling in the lorry died while he was in duty, hence, they filed petition before the Tribunal and they examined P.W.1 and marked Exs.P.1 to P.8 and no evidence adduced and no documents were marked on the side of the respondents. Thereby, they proved their case and Tribunal also correctly



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awarded a just and fair compensation. Hence, this appeal is liable to be dismissed.

4. This Court heard both sides and perused the records. At the time of admitting the appeal this Court has framed the following substantial questions of law:

“ 1. Whether the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Dindigul is correct in fastening the liability in toto with the appellant herein?

2. Whether the Award of Rs.3,96,620/- fixed by the learned Commissioner for Workmen's Compensation is just and proper and not exaggerated?

3. Whether the injured was a “ Workmen” and the accident in question has “arisen in the course of employment” under the provisions of Workmen's Compensation Act?

4. Whether the deceased was a Workman under Section 2(1) (n) of the Workmen's Compensation Act, 1923?

5. Whether in this case a jurisdictional question will involve a substantial question of law and a finding of fact arrived at without there being any evidence would



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also give rise to a substantial question of law?

6. Whether in an appeal against the award of the Commissioner for Workmen's Compensation, the insurance Company can challenge the award on any ground other than what is available to them under the provisions of Motor Vehicles Act?

5. The main contention of the appellant is that the claimants/respondents 1 and 2 have not established that the deceased was under the employment of the first respondent and they have not examined any witness. The claimants/respondents 1 and 2 have filed the petition that the deceased was employed under the first respondent but the owner of the vehicle was not examined as witness. Since they have not filed the proof of the employer-employee relationship, the appellant/second respondent is not liable to pay any compensation to the petitioners.

6. In order to prove the claim petition, on the side of the petitioner, the first petitioner examined P.W.1 and marked Exs.P.1 to P.8. On the side of the respondents, they have not examined witnesses and they have not marked exhibits. According to the evidence of P.W.1, that the deceased was employed



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as loadman under the third respondent/first respondent. On the side of the appellant/2nd respondent no contra evidence adduced and the competent person to say about the employment of the deceased is first respondent and he did not contest the case and thereby, the evidences adduced by the petitioner side and reliable and acceptable.

7. In the F.IR also it was mentioned that the deceased was working as a loadman in the lorry which was going to Chinnalapatti, the driver applied break, as a result the loadman was thrown out the vehicle. Therefore, it is clear that the deceased was working under the employment of 3rd respondent/1st respondent and proved his relationship as employer and employee and the deceased died during the course of employment. Therefore, the petitioners proved that the deceased was a workman under Section 2(1) (n) of the Workmen's Compensation Act and there was a relationship between the deceased and the first respondent as employer and employee and the deceased died in the course of employment. It is seen from the materials on record that there is no contravention that the appellant company is the insurer and the policy was also in force on the date death of the deceased.



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8. After taking into consideration of the evidence on either side the Tribunal came to a fair conclusion that the deceased was under the employment of the first respondent. The Tribunal also in this context elaborately discussed and fastened the liability as against the appellant/second respondent. Therefore, the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Dindigul is correct in fastening the liability in toto with the appellant/2nd respondent herein is correct. Thus, the substantial questions of law 1, 3 and 4 are answered.

9. In this case, the appellant/second respondent disputed the quantum of the amount. The learned Tribunal has fixed the minimum amount of Rs.4,000/- and the same is reasonable. The appellant has not raised any grounds as to how the monthly salary fixed by the Tribunal is erroneous. Per contra, the Tribunal passed reasoned order fixed the basic salary based on the Government order. Therefore, the order passed by the Tribunal in respect of quantum is in order. Thus, the second substantial question of law is answered.



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10. As far as the 5th substantial question of law is concerned, there is no any jurisdictional error as alleged by the appellant/2nd respondent. The respondents 1 and 2/petitioners have categorically pleaded that the deceased was working under the first respondent and based on the pleadings and the available evidences only the Tribunal awarded the award amount. Therefore the order passed by the Tribunal is in order. Therefore, the 5th substantial question of law would not arise.

11. As far as the 6th substantial question of law is concerned, the substantial question of law would not arise in this case, the Insurance Company can challenge the award based on the nature of policy and the defence available to the Insurance Company is depending upon the facts and circumstances of each case.

12. Therefore, the order passed by the Tribunal is correct and no infirmity or perverse in the order passed by the Tribunal. Hence this Court is of the opinion that this Civil Miscellaneous Appeal has no merits and it is liable to be dismissed.



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13. In the result this Civil Miscellaneous Appeal is dismissed. The order passed by the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Dindigul in W.C.No.110 of 2009, dated 30.09.2013 is confirmed. The learned counsel appearing for the appellant represented that already the entire award amount was deposited. The respondents 1 and 2/claimants, are at liberty to withdraw the said amount in accordance with law. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

29.01.2024

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),
Dindigul.

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



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P.DHANABAL,J.

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