



C.M.A.(MD)No.271 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **03.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.271 of 2020
and C.M.P(MD)No.3720 of 2020

M/s.Royal Sundaram General Insurance Co. Ltd.,
A.T.P. Towers,
5th Floor, 12-A, Bye Pass Road,
Madurai ... Appellant/2nd Respondent
Vs.

1.Puniyamoorthi
2.Jeeva
3.Minor Ajithkumar ...Respondents 1 to 3/Claimants

4.K. Vinothkumar ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2019 passed in EC.No.14 of 2014 on the file of the Commissioner for Employees Compensation and Tribunal of the Joint Commissioner of Labour, Thiruchirappalli.

For Appellant : Mr.M.E.Ilango

For R1 to R3 : Mr.M.Karunanithi

R4 : No appearance



JUDGMENT

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The instant appeal has been filed by the Insurance Company challenging the award of compensation to the respondents 1 to 3 herein.

2. The respondents 1 to 3/claimants filed a claim petition before the Labour Commissioner, Trichy, stating that the deceased was working as a Cleaner in the Lorry owned by the 4th respondent herein and while he was cleaning the Lorry, the Lorry which was parked had suddenly moved and dashed another vehicle as a result of which, he sustained fatal injuries.

3. The appellant filed a counter opposing the claim petition stating that the deceased was not employed under the 4th respondent herein and hence, the claim petition is liable to be dismissed.

4. Before the Commissioner, the respondents 1 to 3 examined P.W. 1 and marked Ex.P.1 to Ex.P.9. The 4th respondent examined himself as a witness and the appellant examined his Manager as a witness and marked Ex.R.1 and Ex.R.2.



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5. The Commissioner, on the basis of the evidence on record, held that the deceased was employed under the 4th respondent herein and directed the appellant as the insurer of the 4th respondent to pay the compensation under the Workmen's Compensation Act.

6. The learned counsel for the appellant submitted that the 4th respondent himself has sent a letter, Ex.R.1, denying the employer-employee relationship and also deposed before the Commissioner that the deceased was not employed under him and therefore, the Tribunal ought not to have held that the employer-employee relationship was established by the claimants and prayed for allowing of the appeal.

7. The learned counsel for the claimants, per contra, submitted that the claimants lodged the first information report within two hours of the accident, in which, they had stated that the deceased was employed as a Cleaner in the Lorry; that the 4th respondent had admitted in his cross-examination that his father was taking care of the Lorry business and he came to know about the accident and other facts only through his father; and therefore, the Tribunal was right in disbelieving the evidence of the



4th respondent and awarding compensation to the claimants and therefore, prayed for dismissal of the appeal.

8. A perusal of records reveals that the claimants had lodged a first information report on 28.08.2013 at about 8.30 a.m and the accident took place at 6.30 a.m on the same day. In the first information report, the claimants had stated that the deceased was working as a Cleaner in the Lorry, which belongs to the 4th respondent herein. The averments cannot be stated to be an afterthought. Though the 4th respondent examined himself as a witness and had deposed that the deceased did not work as a Cleaner in the Lorry, the cross examination would reveal that his father was in-charge of the Lorry business and only his father knew as to who was employed in the Lorry and that he came to know the facts stated by him only from his father. The 4th respondent had not chosen to examine his father to prove that the deceased was not employed under him. In the light of the above admission by the 4th respondent, his evidence is hearsay and therefore, this Court is of the view that the finding of the Tribunal holding that the claimants had established the employer-employee relationship cannot be faulted. In any case, the grounds raised in the appeal are factual in nature. No question of law much less a



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substantial question of law has been raised in this appeal warranting interference in an appeal filed under Section 30(1) of the Employee's Compensation Act, 1923.

9. It is represented by the learned counsel for the appellant that the entire compensation amount was deposited before the Commissioner and a portion of the amount was deposited as per the order dated 13.08.2020 in the Indian Bank, Madurai Bench of Madras High Court. The respondents 1 to 3/claimants are permitted to withdraw the entire compensation amount including the amount deposited to the credit of this appeal before the Indian Bank, Madurai Bench of Madras High Court as per the apportionment fixed by the Commissioner.

10. In fine, this appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

03.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Commissioner for Employees Compensation and Tribunal of the Joint
Commissioner of Labour, Thiruchirappalli.

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



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.271 of 2020
and C.M.P(MD)No.3720 of 2020

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