



C.M.A.(MD).No.216 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.216 of 2022
and C.M.P.(MD).No.1927 of 2022

The Branch Manager,
The New India Assurance Co. Ltd.,
No.84, Thiruvanthapuram Road,
Palayamkottai,
Thirunelveli.

... Appellant/2nd Respondent

Vs.

1.Thamburatti

2.Minor Muthuselvi

3.Minor Chithra

4.Minor Iyyappan

... Respondents 1 to 4/Petitioners

(Minor Respondents 2 to 4 represents by their mother the first respondent)

5.Thangaraj

... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923), to set aside the award, dated 25.11.2021, passed in E.C.No.33 of 2018 on the file of the Joint Commissioner of Labour, Thirunelveli.

For Appellants : Mr.R.Ramadurai



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For Respondents : Mr.T.Selvakumaran for R1 to R4

R5 – No Appearance

JUDGMENT

This appeal has been filed to set aside the award, dated 25.11.2021, passed in E.C.No.33 of 2018 on the file of the Joint Commissioner of Labour, Thirunelveli.

2.The facts in brief:

The deceased Pandi was working as a Cleaner in TATA ACE bearing Registration No.TN 72 AA 3747, which belongs to the first respondent in the main petition namely Thangaraj. He was drawing monthly salary of Rs.15,000/- and batta Rs.200/- per day. On 01.04.2018, he was travelling in the vehicle as a cleaner. At that time at about 5.00 p.m., there was an accident, in which, he sustained injuries. He was taken to the hospital and took treatment for about 12 days. But died without responding to the treatment on 13.04.2018. Claiming compensation amount of Rs.40,00,000/-, the claimants filed claim petition before the Commissioner of Labour.



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3.The second respondent in the main petition namely the appellant herein filed the counter stating that there was no employer and employee relationship between the deceased and the first respondent in the main petition. Even as per the statement given by the deceased before the police, subsequent to the occurrence, he has stated that he is a daily wager and the accident did not happen during and in the course of employment.

4.The Commissioner after assessing the evidence on record, recorded a finding that the deceased was working as an employee under the first respondent in the main petition and so on behalf of him, the insurance company is liable to pay the compensation since the death occurred during and in the course of employment.

5.Regarding the compensation, the age of the deceased was fixed at 54. The relevant factor was taken as 139.13. Monthly income namely the salary was fixed as Rs.8,000/-. Loss of dependency was arrived at Rs.5,56,520/- and by adding Rs.5,000 towards funeral expenses, total sum of Rs.5,66,520/- was awarded as compensation. Against which, this



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appeal is preferred by the insurance company.

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6.The learned counsel for the appellant would submit that there was no employer and employee relationship between the deceased and the owner of the vehicle, who is the first respondent in the main petition and the fifth respondent herein. Apart from that he has also contended that there is no policy coverage to the cleaner. Even as per the statement given by the deceased to the police, he has stated that he is a daily wager, the claimants cannot go against the statement of the deceased and contend that he was the cleaner under the fifth respondent herein.

7.Since the relationship between the deceased and the 5th respondent herein was denied and disputed, it is the duty of the claimants to prove that the deceased was working under the 5th respondent during the relevant period. Except the statement of the claimants, no other corroborating evidence was let in. The owner of the vehicle, the fifth respondent herein remained exparte before the Commissioner, so also before this Court. So we have to go by the evidence available on record. The appellant relies upon Ex.P1 the FIR. As mentioned above, it was the



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statement of the deceased given before the police, wherein, he has stated that on 01.06.2018 at about 09.00 p.m., he was travelling in the vehicle along with the owner namely Thangaraj, which was driven by Thangaraj himself and near the place of occurrence, Thangaraj lost the control of the vehicle, it capsized on the left hand side, in which, he sustained injuries. Before that he has stated that he is a daily wager by profession. When there is clear admission or statement at the time of giving complaint, the claimants did not lay any proper documentary evidence to show that he was working as a cleaner under the fifth respondent.

8.The Tribunal recorded finding that it is the duty of the fifth respondent herein or the appellant herein to prove that he was not an employee. Such a negative proof cannot be expected. Only positive proof can be expected. When positive proof in the form of statement of deceased is available, then the burden shifts upon the claimants to prove that the above said statement is wrong. It might have been proved before the Commissioner. Absolutely there is no evidence on record to show the relationship. So recording of finding by the Commissioner on that aspect is not legal and proper. Accordingly, that part of the finding is set aside.



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9.Regarding the compensation no argument was advanced. On the basis of the available records, the commissioner fixed the age of the deceased at 54 and taken Rs.8,000/- as monthly income, arrived at the compensation, which is just and reasonable. Hence, the compensation requires no interference and accordingly, sustained. But, however, award passed by the commissioner is modified, the insurance company is exonerated from the liability. The 5th respondent herein is directed to pay the compensation to the claimants ordered by the commissioner.

10.With the above said modifications, this civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Joint Commissioner of Labour, Thirunelveli.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN,J.

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