



C.M.A.(MD).No.879 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.07.2024

DELIVERED ON : 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.879 of 2023
and C.M.P.(MD).No.12452 of 2023
and Cross. Obj.(MD)No.43 of 2023

C.M.A.(MD).No.879 of 2023

The Divisional Manager,
M/s. United India Insurance Co. Ltd.,
Third Party Hub,
No.7A, West Veli street,
Madurai, Madurai District.

... Appellant/2nd Respondent

Vs.

1.R.Selvan

2.S.Jothi

3.Miss.S.Nagalakshmi

4.S.Rajasekaran

... Respondents/Claimants

5.R.Jeyam

... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order dated 03.11.2022 made in E.C.No.129 of 2019 on the file of the Employee's Compensation Commissioner, (Deputy Commissioner of Labour), Madurai.

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For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.K.Ravi for R1 to R4
R5 – No Appearance

Cross. Obj.(MD)No.43 of 2023

1.R.Selvan

2.S.Jothi

3.S.Nagalakshmi

4.S.Rajasekaran

... Cross Objectors / Respondents
No.1 to 4/Petitioners No.1 to 4

Vs.

1.The Divisional Manager,
M/s. United India Insurance Co. Ltd.,
Third Party Hub,
No.7A, West Veli street,
Madurai, Madurai District.

... Respondents/Claimants

2.R.Jeyam

... 2nd Respondent/5th Respondent/
1st Respondent

PRAYER : Cross Objection is filed under Section 173 of the Motor Vehicles Act, to enhance the award in respect of quantum of compensation awarded in E.C.No.129 of 2019 dated 03.11.2022 on the file of the learned Employee's Compensation Commissioner, (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.K.Ravi



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For Respondents : Mr.B.Rajesh Saravanan for R1
R2 – No Appearance

COMMON JUDGMENT

This appeal has been directed against the order dated 03.11.2022 made in E.C.No.129 of 2019 on the file of the Employee's Compensation Commissioner, (Deputy Commissioner of Labour), Madurai. Simultaneously, the Cross Objection has been filed seeking enhancement of the award in respect of quantum of compensation awarded in the above said order.

2.The facts in brief:

The vehicle belongs to the first respondent bearing Registration No.TN 57A 7569, TATA 709 Mini truck. The deceased Balamurugan was a load man in the vehicle. On 21.06.2019, the deceased was travelling in the vehicle as a load man for loading and unloading vegetable boxes. At about 8.30 p.m. the driver of the vehicle driving the vehicle in rash and negligent manner and tried to claimb sand portion. Because of the rash and negligent driving he lost the control. The vehicle capsized and the deceased died on the spot. He was aged about 19 at the time of occurrence and getting Rs.20,000/- as monthly salary. A case was



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registered on the file of Sindhupatti police Station against the driver of the first respondent's vehicle in the main petition. The first respondent's vehicle was insured with second respondent. Claiming compensation amount of Rs.40,00,000/- the claim application was filed.

3.The owner of the vehicle remained exparte. The insurance company filed a counter stating that the deceased was a load man in the vehicle under the employment of the first respondent. He travelled in the vehicle as un-authorized passenger on the backside of the vehicle. Since there was no employer and employee relationship between the deceased and the first respondent, he is not entitled for claiming compensation.

4.The Commissioner of Labour recorded a finding that the deceased travelled in the vehicle as a load man under the employment of the first respondent. Regarding the compensation amount the monthly salary was taken as Rs.8,000/-. Since he was aged about 20. The relevant factor is taken as 224.00 and awarded Rs.8,96,000/- towards loss of income. Rs.5,000/- was added as funeral expenses. The total compensation amount was fixed at Rs.9,01,000/-. The Insurance



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Company was directed to pay the above said amount on behalf of the insurer. Against which, the appeal is preferred by the Insurance company.

5.The cross objection was made by the claimant, aggrieved over the quantum of compensation.

6.The learned counsel for the Cross applicant would submit that the deceased travelled in the vehicle as a gratuitous passenger.

7.But, there is no evidence on record to show that he was in employment under first respondent as load man. There was no proper finding by the Labour Commissioner as to the relationship; So the matter must be remitted to the Labour Commissioner for fresh consideration.

8.Per contra, the learned counsel for the respondents would submit that PW2 has spoken about the employer and employee relationship between the first respondent and the deceased and he was also referring to Rule 240 to 260 of Tamil Nadu Motor Vehicles Rules and submitted that there is no evidence on record to show that the deceased travelled in



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he was standing in the bus stop. At that time, the first respondent's vehicle came there. At that time, the deceased travelled in the backside of the vehicle near the place of occurrence, the driver lost the control and the vehicle capsized. The deceased was thrown out and died on the spot. By pointing out this, the learned counsel for the Insurance Company would submit that this does not support the case of the claimants that deceased was load man under the employment of the first respondent.

12.PW1 is the father of the deceased and he stated that the deceased travelled as a load man. But, he would admit that there is no documentary evidence to show that he was the employee under the first respondent. He also admits that he boarded the vehicle from the Ariyapatti bus stop. PW2 has stated that he is also one of the load men working in paravai market. He says that Balamurugan is also a load man and he travelled in the vehicle for loading and unloading purpose. They loaded the vegetables in Paluthapatty. Then travelled to market area. He also admits that he and Balmurugan travelled in the vehicle to the market area. The lorry was already loaded with vegetables.



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13. Reading of PW2's evidence shows that the deceased Balamurugan was a loadman working in that market area. So used to travel in the very same vehicle in the routine manner. So it appears that on that occasion only the occurrence took place. So we can take that deceased was a load man. Since the first respondent's vehicle is a load vehicle carrying on the transport and loading and unloading of vegetables, it must be deemed to have been taken that he was in employment under the first respondent for loading and unloading purpose. Since there is no direct evidence, only on the basis of available evidence, we can come to this conclusion, since no other conclusion is probable and possible also.

14. So I find no reason to differ from the view taken by the Commissioner of Labour. In the above said circumstances, request made by the appellant for remand is not required and his request is rejected. Regarding the age and relevant factor, it is rightly taken and no interference is called for.

15. Now coming to the violation of policy conditions. The learned



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counsel for the appellant submitted that against the policy conditions, the deceased travelled in the backside of the vehicle, which is a load vehicle.

So the Insurance Company has to be absolved of his liability. In this aspect let us go to the policy, wherein, it is seen that liability to workmen is incurred Rs.100/- was received a premium amount. So there is no indication in the case that more than 6 persons were carrying in the vehicle.

16.In this connection we can usefully refer to the judgment of the co-ordinate Bench of this Court made in the case of **Branch Manager, New India Assurance Co. Ltd., Saathur Vs. P.Ayyanar and others** reported in **2023 (2) TN MAC 9** (from CMANo.270 of 2022)

17.In view of the above said judgment of the co-ordinate Bench, I find that there no violation is established by the insurance company. Even as per the FIR, 5 persons travelled, two in the cabin and three in the backside. So this contention on the part of the Insurance Company is also rejected and Insurance Company is liable to pay the compensation. It incurred the liability towards the load man also.



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18.Regarding the compensation amount as mentioned above Rs.8,000/- was taken by the Commissioner taking into account the amount fixed by the Central Government in the notification as per the provisions of Section 4 of the Employees Compensation Act. The date of occurrence is on 21.06.2019. Since there was no proper evidence on record to show the correct wage for the deceased, but, as mentioned above, the claimants relied upon the notification revising the wage structure of the employees as per the provisions of the Minimum Wages Act. But, it has no relevancy to the present subject, because only Central Government is competent to issue notification in this regard as providing under Section 4 of the Act. So I find no interference is called for either at the instance of the Insurance Company or at the instance of the claimant. So appeal and cross appeal both deserve to be dismissed.

19.Accordingly, the civil miscellaneous appeal as well as the cross objection are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.08.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Deputy Commissioner of Labour, Employees Compensation
Commissioner, Madurai.
- 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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