



C.M.A(MD)No.368 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.03.2024

PRONOUNCED ON : 29.04.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.368 of 2021,
Cross Objection (MD)No.7 of 2024
and
C.M.P.(MD)No.3123 of 2021

C.M.A(MD)No.368 of 2021:

The Branch Manager,
National Insurance Company Limited,
Divisional Office, No.3, North Veli Street,
Madurai 625 001.

... Appellant

Vs.

- 1.Ramalakshmi
- 2.Minor Seeni Geetha
- 3.Minor Lokesh
- 4.Magamani
(Father of deceased Rajiv Gandhi)
- 5.Kanthari
(Mother of deceased Rajiv Gandhi)

(Minor respondents 2 and 3 are represented by
their Mother / 1st respondent)



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6.The Authorized Representative
(The Executive Engineer – PWD),
M/s.K.A.I.G. Construction Private Limited,
Special Project Division, WRO Madurai,
1/1-A, P.T.Rajan Road, Bibikulam,
Madurai 625 002.

7.The Executive Officer (PWD),
Bennikuick Building,
Gokale Road, Thallakulam,
Madurai 625 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, against the award dated 11.10.2021 made in EC No.63 of 2012 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, served on 20.01.2021.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R5	: Mr.A.Theethar
For R6	: Mr.R.Saravanan
For R7	: M/s.S.Jeya Priya
	Government Advocate

Cross Objection (MD)No.7 of 2024:

The Authorized Representative
(The Executive Engineer – PWD),
M/s.K.A.I.G. Construction Private Limited,
Special Project Division, WRO Madurai,
1/1-A, P.T.Rajan Road, Bibikulam,
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... Appellant

Vs.

1.The Branch Manager,
National Insurance Company Limited,
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- 2.Ramalakshmi
3.Minor Seeni Geetha
4.Minor Lokesh
5.Magamani
(Father of deceased Rajiv Gandhi)
6.Kanthari
(Mother of deceased Rajiv Gandhi)

(Minor respondents 3 and 4 are represented by their Mother / 2nd respondent)

7.The Executive Officer (PWD),
Bennikuick Building,
Gokale Road, Thallakulam,
Madurai 625 002.

... Respondents

PRAYER: Cross Objection filed under Order XLI R22 of Civil Proceedings against the award dated 11.10.2021 made in EC No.63 of 2013 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, served on 23.04.2021.

For Appellant	: Mr.R.Saravanan
For R1	: Mr.S.Srinivasa Raghavan
For R2 to R6	: Mr.A.Theethar
For R7	: M/s.S.Jeya Priya
	Government Advocate

JUDGMENT

The present Civil Miscellaneous Appeal is filed by the Insurance Company against the order dated 21.12.2020 passed by the Commissioner of Workmen Compensation under Workmen Compensation Act.



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2. The M/s.K.A.I.G. Construction Private Limited is the first respondent, the Insurance Company is the second respondent and the Executive Engineer of PWD is the third respondent in the claim petition. The second respondent in the claim petition namely the Insurance Company had filed present Civil Miscellaneous Appeal against the impugned order. The first respondent in the claim petition, namely M/s.K.A.I.G. Construction Private Limited had preferred cross objection against the same impugned order.

3. The claimants had filed the petition stating that the deceased died while he was carrying on work under Public Works Department, hence they had claimed compensation under the Workmen Compensation Act. The said petition was allowed directing the Insurance Company to pay Rs.7,45,874/- with 12% interest from the date of accident till the date of deposit. Aggrieved over the same, the present appeal is preferred by the Insurance Company and Cross Objection is filed by the Private Company.

4. The contention of the claimants is that while the 1st claimant's husband was working the construction work of 'Check Dam', he was injured in the land slide and died. The contention of the Insurance Company is that the said Private



Company was insured with the Insurance Company under “All Risk Insurance Policy”, but the policy is not applicable for any death or injuries to the employees of the Private Company. In the present case, since the deceased was working as employee under the Private Company, there is no coverage under the policy and hence the Insurance Company contended that they are not liable to paying the compensation under the said policy.

5. To substantiate the contention the Insurance Company the Insurance Company relied on the FIR which was preferred by the Private Company’s employee namely Ilaiyaraja, who had stated in the FIR that while the deceased Rajiv Gandhi was working, he died due to landslide. The Insurance Company is further referring to the claim petition wherein it is stated that the deceased was working under the said Private Company. Immediately after the accident, the said Private Company communicated to the Insurance Company through letter, which is marked as Ex.R2, wherein it is stated that the deceased being an employee, while carrying on the work of construction of “Check Dam” died due to landslide. Further, the Private Company has paid Rs.1,20,000/- as compensation to the claimants. All these would indicate that the deceased was an employee under the Private Company and the there is no insurance coverage for the death or injury



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suffered to the employees.

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6. The Private Company has filed Cross Objection, wherein it is stated that the Commissioner ought to have framed the issue whether the deceased was an employee as a preliminary issue, since if the deceased is not an employee, then the Commissioner is not having any jurisdiction. Further no documentary evidence was produced that the deceased was an employee under the Private Company, further, the Private Company has continuously denied that the deceased was an employee under them, hence, the burden of proof lies with claimants and Insurance Company. The policy is termed as “All Risk Insurance Policy”, which is self-explanatory, hence, now the Insurance Company cannot take a stand that the said policy would not cover the employees of said Private Company. Further, the Private Company was under *bona fide* belief that the said policy would cover the employees as well. Hence, the Private Company has filed the present Cross Objections.

7. Heard Mr.Srinivasa Raghavan, the Learned Counsel appearing for the appellant / Insurance Company, Mr.R.Saravanan, the Learned Counsel appearing for the Cross Objector / Private Company, Mr.A.Theethar, learned Counsel



appearing for the claimants, M/s.S.Jeya Priya, the Learned Government Advocate appearing for the PWD Department and perused the records.

8. The present Civil Miscellaneous Appeal is admitted on the following Substantial Question of Law:

“Whether the Learned Commissioner was justified in finding that the appellant / insurance company is liable to compensate the legal representatives of the deceased Rajiv Gandhi when it is proved that he was employed only under the 1st respondent at the time of accident?”

9. The said Private Company has taken a stand that the deceased was not their employee. Even though initially, the said Private Company submitted a letter to the Insurance Company that the deceased was their employee but the Private Company has changed the stand stating that the deceased was not their employee. Further, it was stated that the deceased had come to the site to watch the construction of Check Dam, but due to landslide the deceased was trapped, injured and finally died. Initially, the said Private Company was under the impression that the insurance is covering for all kinds of risk, since the name of the policy is “All Risk Insurance Policy”. When the Insurance Company declined to pay compensation by citing that the policy is not covered for employees, the



said Private Company has changed their stand. Over and above the Private Company has alleged that the Insurance Company did not disclose the real fact of the policy before entering into contract of risk policy and there is no transparency in making the policy.

10. After hearing the arguments, this Court has given its anxious consideration. It is seen that the name of the policy is “All Risk Insurance Policy” and the same should apply for all purpose, but the Insurance Company has taken a stand by citing the terms of contract that the same is not applicable for the employees. However, it is to be noted, that the Insurance Company has not taken any efforts to prove or to investigate or to assert whether the deceased was the employee of the said Private Company. Interestingly, in the cross examination of the Insurance Company, they admitted that they did not investigate or ascertain the real fact and further, stated that they were under the impression that it was not necessary to investigate at all.

11. Further, the said Private Company has not produced any evidence to prove that the deceased was not their employee. Even though negative cannot be proved, the said Private Company ought to have submitted the list of employees



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from which it could have been proved that the deceased was not an employee. Since there is no proof that the deceased in employed in the Private Company, this Court is of the considered opinion that the deceased is not the employee of the Private Company. Hence, the substantial question of law is answered accordingly.

12. Now a strange situation arises. If the deceased is considered as employee of the said Private Company, then the “All Risk Insurance Policy” is not covering the accident. If the deceased is considered a third party who came to watch the construction activities, then the claim will not come under Workmen Compensation Act and the Commissioner will not have jurisdiction. Moreover, the case will not come under Motor Vehicles Act, 1988.

13. When there is no evidence to prove that the deceased was an employee of the said Private Company, this Court is of the considered opinion that the deceased is not an employee. At the same time, this Court is of the considered opinion that the deceased is a third party who came to watch the construction activities. If it is so, then the Workmen Compensation Act will not be applicable and the Commissioner under the Workmen Compensation Act will have no jurisdiction. Further, the case itself cannot be heard under Motor Vehicles Act,



1988.
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14. Having held so that the Motor Vehicles Act, 1988 is not applicable, the claimants ought to be directed to seek common law remedy by filing suit. But at this stage, this Court is not inclined to direct the claimants to prefer appropriate remedy before appropriate forum, since it is seen that the accident occurred in the year 2012 and the claimants have not received any compensation until now. Therefore, this Court is invoking the inherent power of this Court and is inclined to grant relief to the claimants.

15. Therefore, this Court is granting compensation of Rs.7,45,874/- payable by the Insurance Company. Since the Private Company has already paid Rs. 1,20,000/-, this Court is inclined to reduce the interest from 12% to 7.5% per annum payable from the date of date of accident till the date of deposit. It is made clear that the above amount of Rs.7,45,874/- is payable and Rs.1,20,000/- shall not be deducted. The Private Company had paid the said amount independently and the same cannot be recovered from the compensation of Rs.7,45,874/-. The father and mother of the deceased (claimants 4 and 5) are not entitled to any compensation.



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16. Hence, the appellant Insurance Company is directed to deposit Rs. 7,45,874/- with interest at the rate of 7.5% per annum and costs to the credit of Joint Labour Commissioner of Labour, Madurai, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (the claimants 1 to 3 are entitled to Rs.2,95,874/-, Rs.2,25,000/- and Rs. 2,25,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the share of the minor children in a nationalized bank until the children attain majority. The first respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimants attain majority, they can withdraw their shares with accrued interest.

17. With the above said observations, the Civil Miscellaneous Appeal and Cross Objections are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

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

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1. Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Madurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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