



C.M.A(MD)No.1061 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1061 of 2023

and

C.M.P.(MD).Nos.14566 of 2023 and 294 of 2024

The Branch Manager,
United India Insurance Company Limited,
No.3/4, Trichy Main Road,
Near RVS Arts & Science College,
Sulur, Coimbatore – 641 402. (P.A.O.A).

... Appellant

Vs.

1.G.Palani
2.P.Latha

3.M/s.Sri Thirumalai Kall Depot,
No.1/445, Avinasi Road,
Neelambur,
Coimbatore – 641 014.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, 1923, against the Award, dated 19.09.2022 in E.C.No.13 of 2021 on the file of the Commissioner for Employee's Compensation, Dindigul.

For Appellant : Mr.C.Karthik

For R3 : Mr.J.Lawrance



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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. The petition was filed under Workmen Compensation Act. The contention of the claimants is that the deceased had worked under the 3rd respondent but the 3rd respondent had filed counter before the Commissioner that the deceased was not employed by him and there is no employer employee relationship between them. The further contention of the 3rd respondent is that he had engaged one Pazhanisami for fencing the land and the deceased was engaged by the said Pazhanisami, hence, the said Pazhanisami is liable to pay the compensation. The contention of the appellant is that the when there is no employer employee relationship, then the Insurance Company is not liable to pay the compensation.

3. After hearing the arguments this Court had given its anxious consideration. When the 3rd respondent had filed a counter denying employer employee relationship but had state the name of the original employer, then the claimants ought to have taken steps to implead the said Pazhanisami, but the claimants had failed to do so.



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4. It is seen that the 3rd respondent had filed counter denying employer and employee relationship, but failed to depose before the Court. Therefore, the claimants did not get an opportunity to prove that the deceased was employed under the 3rd respondent. Further both the claimants and the Insurance failed to take steps to produce the 3rd respondent as witness to substantiate the employer and employee relationship.

5. At this juncture the Learned Counsel appearing for the claimants submitted that the vehicle with registration number TN 37 CV 8232 belongs to the 3rd respondent and he is the owner of the vehicle. Further the deceased was staying in the 3rd respondent company while carrying out the fencing work. In fact, the FIR is filed by one of the co-workers of the 3rd respondent Company. Based on these facts this Court is of the considered opinion that the 3rd respondent is also liable to pay compensation.

6. The Learned Counsel for the appellant submitted that 50% of the liability may be fixed on the 3rd respondent. But the Learned Counsel appearing for the 3rd respondent objected for fixing the liability as 50% on them. The Learned Counsel for the claimants submitted that it would be difficult to recover the amount from



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the 3rd respondent. Taking overall consideration, this Court is fixing the liability on the appellant Insurance Company as 60% and on the 3rd respondent herein as 40%.

7. Therefore, the appellant Insurance Company and the 3rd respondent are directed to deposit Rs.16,80,000/- totally (i.e., Rs.10,08,000/- by the Insurance Company and Rs.6,72,000/- by the 3rd respondent) with interest at the rate of 12% per annum and funeral costs (totally Rs.5,000/-, i.e., Rs.3,000/- by the appellant and Rs.2,000/- by the 3rd respondent) to the credit of Joint Commissioner of Labour, Dindigul, 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 equal shares with proportionate accrued interests, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Insurance company shall withdraw the excess amount, if any.

8. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

04.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Tmg



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- To
1. The Commissioner for Employee's Compensation,
Dindigul.
 2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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