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C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

C.M.A.(MD) Nos.481 & 648 of 2021
and
C.M.P.(MD) No.6189 of 2021

SUNDER MOHAN, J.

Today, the matter is listed under the caption “For Being Mentioned”.

2.It is now reported that the second and third claimants in W.C.No.81 of 2014 have attained majority. Hence, paragraph No.23 of the order dated 19.10.2024, shall be replaced as follows:

“23. The claimants in W.C.No.81 of 2024 are entitled to the compensation as per the apportionment fixed by the Commissioner. The claimants in W.C.No.81 of 2024 are permitted to withdraw their shares along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Commissioner.”

In all other respects, the order dated 19.10.2024, shall remain unaltered.

4. The Registry is directed to carry out the amendment and issue a fresh certified copy of the order, dated 19.10.2024.

09.01.2025

rsi



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SUNDER MOHAN, J.

rsi

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09.01.2025



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C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	16.10.2024
Pronounced on	19.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.481 & 648 of 2021

and

C.M.P.(MD) No.6189 of 2021

C.M.A.(MD) No.481 of 2021

1.Tamilselvi

W/o.Rajamani

2.Minor.Karuppusamy

S/o.Rajamani

3.Minor.Manikandan

S/o.Rajamani

4.Minor.Vinothini

D/o.Rajamani

[Minor second to fourth appellants are
represented through their mother and next friend,
the first appellant]

5.Veeranathevar

S/o.Muthuthevar

... Appellants

Vs.

1.Ilangovan

S/o.Pitchai Thevar

2.Nagarajan



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

S/o.Valivittan

3.The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
No.82, I Floor, Thirumalai Plaza,
New Tharapuram Road,
Palani Town, Dindigul District.

... Respondents

[R2 - Notice was dispensed with *vide* order of this Court
dated 20.06.2024]

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the award dated 09.02.2021 made in W.C.No.81 of 2014 on the file of the Commissioner for Workman Compensation (Commissioner for Workmen), Dindigul.

For Appellants : Mr.V.Malaiyendran

For R1 : No appearance

For R3 : Mr.K.Balasubramanian

C.M.A.(MD) No.648 of 2021

The Branch Manager,
Oriental Insurance Company Ltd.,
No.82, First Floor, Thirumalai Plaza,
Puthu Dharapuram Road,
Palani Town, Dindigul District.

... Appellant

Vs.

1.Palmani
W/o.Late.Senthilkumar
2.Minor.Kalai Arasu
S/o.Late.Senthilkumar



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

3.Minor.Kamalesh
S/o.Late.Senthilkumar

[Minor second and third respondents are
represented by their mother and guardian, the
first respondent]

4.Ammapattiyam
S/o.Vellaiyan

5.Lakshmi
W/o.Ammapattiyam

6.Ilangovan
S/o.Pitchaithevar

7.Nagarajan
S/o.Vazhivittan

... Respondents

[R6 remained *ex parte* before the lower court &
R7 - Notice was dispensed with *vide* order of this Court
dated 20.06.2024]

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the Judgment and Decree dated 09.02.2021 passed by the Commissioner for Workmen's Compensation (Commissioner for Workmen), Dindigul in W.C.No.82 of 2014 granting compensation of Rs.8,28,205/- (Rupees Eight Lakhs Twenty Eight Thousand Two Hundred and Five only).

For Appellant : Mr.K.Balasubramanian

For R1 to R5 : Mr.V.Malaiyendran



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C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

For R6 : No appearance

COMMON JUDGMENT

Both these appeals are taken up together for final disposal because they challenge the common order passed by the Commissioner for Workmen's Compensation (Commissioner for Workmen), Dindigul, in two claim petitions.

2. C.M.A.(MD) No.481 of 2021 has been filed by the claimants, aggrieved by the dismissal of their claim petition in W.C.No.81 of 2014. C.M.A.(MD) No.648 of 2021 has been filed by the Insurance Company, aggrieved by the grant of compensation to the legal heirs of one of the deceased in W.C.No.82 of 2014.

3. The legal heirs of the two deceased had filed separate claim petitions before the Commissioner, stating that both the deceased were working as loadmen in the lorry bearing registration No.TN-65-Y-0806, which belonged to one Mr.Ilangovan (the first respondent in C.M.A.(MD) No.481 of 2021 and the sixth respondent in C.M.A.(MD) No.648 of 2021), and that on 18.05.2014, the deceased went to a brick kiln, where, while removing sand, they were buried under the sand and died on the spot. The claimants had also impleaded one



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

Mr.Nagarajan, the original insured, who had sold the vehicle to Mr.Ilangovan, in whose name the Registration Certificate was subsequently transferred.

However, the name transfer in the insurance policy had not been effected.

4. Mr.Ilangovan, the owner of the lorry, remained *ex parte* before the Tribunal.

5. Mr.Nagarajan, the original insured, had filed a counter denying the averments in the claim petitions and stating that he had sold the vehicle to the said Mr.Ilangovan 1 ½ years prior to the date of the accident and was unaware of the incident or the death of the deceased, and therefore, he is not liable to pay any compensation.

6. The Insurance Company had filed a counter, denying the averments in the claim petitions and stating that the claimants are bound to establish the employee-employer relationship; that the insured was one Mr.Nagarajan, and therefore, there is no privity of contract between Mr.Ilangovan and the Insurance Company, and therefore, they are not liable to pay compensation.

7. In W.C.No.81 of 2014 [C.M.A.(MD) No.481 of 2021], the claimants



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

examined P.W.1 and marked Exs.P1 to P6. In W.C.No.82 of 2014 [C.M.A.(MD) No.648 of 2021], the claimants examined P.W.1 and marked Exs.P7 to P9. The Insurance Company examined R.W.1 and R.W.2 and marked Exs.R1 to R3, in both the claim petitions.

8. The Commissioner dismissed the claim petition in W.C.No.81 of 2014 filed by the legal heirs of the deceased Rajamani and allowed the claim petition in W.C.No.82 of 2014 filed by the legal heirs of the deceased Senthilkumar, by granting a compensation of Rs.8,28,205/-.

9. Mr.K.Balasubramanian, the learned counsel for the appellant in C.M.A.(MD) No.648 of 2021 submitted that the claimants in W.C.No.82 of 2014 had not established the employee-employer relationship between the deceased and the said Mr.Ilangovan [the sixth respondent in C.M.A.(MD) No. 648 of 2021]; that the evidence would suggest that the deceased was never employed under the sixth respondent Mr.Ilangovan; and that since the finding of the Commissioner is perverse, the award has to be set aside.

10. The learned counsel for the Insurance Company/third respondent in C.M.A.(MD) No.481 of 2024 submitted that the dismissal of the claim petition



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

in W.C.No.81 of 2014 filed by the legal heirs of the deceased Rajamani is in accordance with law and therefore, the said appeal has to be dismissed.

11. Mr.V.Malaiyendran, the learned counsel for the claimants, insofar as C.M.A.(MD) No.481 of 2024 is concerned, submitted that the evidence of P.W. 2 and Exs.P2, P6, and P7 have been ignored by the Commissioner; and that since the finding of the Commissioner is perverse, this Court may set aside the dismissal of the claim petition in W.C.No.81 of 2014 and award compensation to the legal heirs of the deceased Rajamani. The learned counsel, insofar as C.M.A.(MD) No.648 of 2021 is concerned, submitted that the compensation awarded to the legal heirs of the deceased Senthilkumar in W.C.No.82 of 2014 is in accordance with the evidence; and that, in the absence of any substantial questions of law raised, C.M.A.(MD) No.648 of 2021 filed by the Insurance Company may be dismissed.

12. In C.M.A.(MD) No.481 of 2021 filed by the legal heirs of the deceased Rajamani, this Court had framed the following substantial question of law:

Whether there was perversity in the findings of the tribunal that there was no employer employee relationship between the first respondent and the deceased inspite of the availability of documents marked as Exs.P2, P6 and P7 and the



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

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evidence adduced by P.W.2?

13. In C.M.A.(MD) No.648 of 2021 filed by the Insurance Company, this Court had framed the following substantial questions of law:

1. Whether the Commissioner for Workmen's Compensation erred in fastening the liability on the appellant / insurer, when the claimants have failed to prove that there existed relationship of employer and employee between the first respondent and the deceased?

2. Whether the Commissioner for Workmen's Compensation erred in mulcting liability on the appellant / insurer, without considering and deciding the material aspects as to whether there was actual use of the vehicle and there was any connection between the cause of death and the use of the vehicle?

14. This Court proposes to deal with the substantial questions of law framed in each of the appeals separately.

C.M.A.(MD) No.648 of 2021

15. In this case, the claimants, who are the wife, the children, and the parents of the deceased Senthilkumar, had examined P.W.1, the wife of the deceased, who had deposed that her husband was employed as a loadman in the lorry, which belonged to one Mr.Ilangovan. The manner of the accident has



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

also been spoken to by P.W.1 in both W.Cs., which is corroborated by the averments in the FIR (Ex.P1) registered based on the complaint given by the Village Administrative Officer of Periyampatti Village. The appellant has not let in any contra evidence.

16. In the light of the evidence before the Commissioner, the factual finding of the Commissioner that the claimants had established the employee-employer relationship between the deceased and the said Mr.Ilangovan cannot be faulted.

17. The insurance was originally taken by one Mr.Nagarajan. Subsequently, the Registration Certificate was transferred in the name of the said Mr.Ilangovan. However, the insurance has not been transferred in the name of the said Mr.Ilangovan. The law is well settled. In a decision in ***United India Insurance Vs. M.Periyasamy and another***, reported in ***2008 (2) TN MAC 502***, a learned Single Judge of this Court held that on the date of the accident, if the name transfer in the insurance policy has not been effected but the transfer is effected in the Registration Certificate, it cannot be said that there was no privity of contract between the transferee and the insurance company at the



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

time of the accident. The Hon'ble Supreme Court, under similar circumstances, in the case of *Mallamma (Dead) by Lrs. Vs. National Insurance Company Limited and Others*, reported in (2014) 14 SCC 137, held that since the ownership of the vehicle had been transferred and was covered under a valid insurance policy, it cannot be said that there was no privity of contract between the insurer and the transferee, in view of the deeming provision contained in Section 157(1) of the Motor Vehicles Act, 1988.

18. In view of the above, in the present case also, it cannot be said that there is no privity of contract between Mr.Ilangovan and the Insurance Company. Therefore, this Court is of the view that the factual finding of the Commissioner is not perverse, and hence, no interference is called for. The substantial questions of law are answered accordingly.

C.M.A.(MD) No.481 of 2021

19. According to the claimants, one Palmani, the wife of the deceased Senthilkumar, who was examined as P.W.1 in W.C.No.82 of 2014, had deposed about the relationship between the said Rajamani and Ilangovan. The claimants had examined one Tamilselvi, the wife of the Rajamani, as P.W.1 in W.C.No.81 of 2014. She had deposed that the said Rajamani was employed under the said



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

Ilangovan. However, the evidence of R.W.1, the Village Administrative Officer, is that the said Rajamani took the deceased Senthilkumar and his (Rajamani) son Manikandan to a land that belonged to one Kumarasen for the purpose of illegally loading sand in a lorry belonging to the said Ilangovan for the brick kiln operated by the deceased Rajamani, and that Rajamani was not employed as a loadman. The FIR (Ex.P1) shows that Rajamani, Senthilkumar, and Manikandan went to the land belonging to Kumarasen to take sand for the brick kiln owned by the deceased Rajamani, and the VAO had sought for action against Kumarasen for permitting illegal quarrying of sand from his land. The evidence before the Commissioner thus would show that Rajamani was running a brick kiln and was not working as a loadman under the said Ilangovan.

20. Ilangovan remained *ex parte* before the Commissioner and has not chosen to enter appearance before this Court.

21. Further, this Court finds that though the appellants in C.M.A.(MD) No.481 of 2021, in the grounds of appeal, had stated that P.W.2 was examined, the first claimant in both W.Cs. were examined as P.W.1 in the respective W.Cs. and no P.W.2 was examined. That apart, in the grounds of appeal, the FIR was shown as Ex.P2, the final report as Ex.P7, and Form IV issued by the



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

Inspector of Factories as Ex.P6. However, the records indicate that no such documents were filed before the Commissioner. On the other hand, Ex.P1 is the FIR, and Exs.P6 and P7 are the death certificates of the deceased. According to the appellants, Exs.P2, P6, and P7 are documents fitted to prove the employer-employee relationship, which is not so. These documents are of no avail to the claimants for proving that relationship. Therefore, in the absence of any evidence to establish the employer-employee relationship, and since there is evidence to suggest that Rajamani was running a brick kiln, the factual finding of the Commissioner cannot be said to be perverse. As such, no interference is called for. The substantial question of law is answered accordingly.

22. Therefore, this Court is of the view that the common order of the Commissioner in both claim petitions is liable to be confirmed and is confirmed. Both the appeals are liable to be dismissed.

23. The claimants in W.C.No.81 of 2014 are entitled to the compensation as per the apportionment fixed by the Commissioner. The first, fourth, and fifth claimants in W.C.No.81 of 2014 are permitted to withdraw their shares along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Commissioner. Since the second



C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

and third claimants in W.C.No.81 of 2014 are minors, their shares are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain majority. The first claimant in W.C.No.81 of 2014, who is their mother and natural guardian, is permitted to withdraw the accrued interest once every six months.

24. In the result, both these Civil Miscellaneous Appeals are dismissed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

19.10.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Commissioner for Workmen,
The Commissioner for Workmen's Compensation,
Dindigul, Dindigul District.

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



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C.M.A.(MD) Nos.481 & 648 of 2021
in C.M.P.(MD) No.6189 of 2021

SUNDER MOHAN, J.

JEN

Pre-Delivery Common Judgment made
in
C.M.A.(MD) Nos.481 & 648 of 2021

19.10.2024