



C.M.A.(MD)No.1242 of of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **21.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1242 of 2024
and C.M.P(MD)No.13079 of 2024

Branch Manager,
Cholamandalam MS General,
Insurance Company Ltd.,
No.3 & 4, Dindigul National Highways,
Kalavasal, Arasaradi,
Madurai – 625 010.

...Appellant/2nd Respondent

Vs.

1.S.Arumugam
2.Pothumponnu
3.S.Kathirvel

...Respondents 1 & 2/Petitioners 1 & 2
...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Employees Compensation Act, 1923, against the fair order made in E.C. No.11 of 2021 on the file of the Commissioner for Employees Compensation, Madurai, dated 24.11.2022.

For Appellant : Mrs.K.R.Shivashankari

For R1 & R2 : Mr.S.Srinivasa Raghavan

For R3 : Mr.D.Thiruppathi



C.M.A.(MD)No.1242 of of 2024

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J U D G M E N T

The appeal has been filed by the insurance company challenging the award of the Commissioner.

2. The respondents 1 and 2/claimants filed a claim petition before the Commissioner stating that while the deceased was travelling as a load-man in a TATA ACE goods vehicle, the driver of the vehicle drove the same in a rash and negligent manner; that the vehicle capsized and fell in a pit near the road, as a result of which, the deceased sustained fatal injuries.

3. The owner of the vehicle/third respondent herein remained exparte before the Commissioner.

4. The appellant filed a counter stating that as per the policy, only one person can travel along with the driver; that the deceased was not employed under the third respondent; that the first information report suggests that the passengers had taken the TATA ACE goods vehicle for a temple visit; that therefore, the deceased cannot be treated as a load-man



C.M.A.(MD)No.1242 of of 2024

under the third respondent herein; and that in any case, the compensation claimed was excessive.

5. The respondents 1 and 2 examined P.W.1 and marked Ex.P.1 to Ex.P.12. The appellant examined R.W.1, who was an official working in the appellant company. The Commissioner found that the employer employee relationship was established and awarded a compensation of Rs.16,94,150/- payable by the appellant.

6. The learned counsel for the appellant submitted that the averments in the first information report and the claim petitions would suggest that the deceased was not employed under the third respondent; that the policy, Ex.P.9, would show that the premium was only paid to cover the driver; and that therefore, they are not liable to pay compensation and prayed for setting aside the award.

7. The learned counsel for the respondents 1 and 2/claimants per contra submitted that the factual finding of the Commissioner that the deceased was employed as a load-man under the third respondent is based on the evidence of P.W.1 and the averments in the first information



C.M.A.(MD)No.1242 of of 2024

report; that the evidence of R.W.1 would suggest that the appellant failed to dislodge the evidence on the side of the claimants; that as per Rule 236 of Tamil Nadu Motor Vehicles Rules, six persons can travel in addition to the driver; and submitted that no substantial question of law has been raised by the appellant in this appeal warranting interference in the award of the Commissioner.

8. The learned counsel for the third respondent, who remained exparte before the Commissioner, would state that the deceased was employed as a loader under the third respondent.

9. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The only point for consideration is whether the appellant is liable to pay compensation.

11. In Ex.P.4, the first information report, the informant Santhosh stated that the deceased travelled in the van as a loadman for loading and



C.M.A.(MD)No.1242 of of 2024

unloading the vessels for business purposes. As per the averments in the first information report, six persons travelled in the goods vehicle. Rule 236 of the Motor Vehicles Act permits six persons to travel in a goods vehicle in addition to the driver. The policy of insurance stipulates that the seating capacity including the driver is two. R.W.1, the official of the appellant had admitted in the cross-examination that he had enquired with the third respondent as to whether the deceased was employed under the third respondent, and had not submitted any report in this regard. The Commissioner had drawn an adverse inference that the report was not produced since it was not in favour of the appellant. The Commissioner accepted the evidence of P.W.1 and the averments made in the first information report to hold that the claimants had established that the deceased worked as load-man with the third respondent herein. The Commissioner, being the final fact finding authority, this Court cannot re-appreciate the evidence. Further no substantial question of law is involved in the above appeal. The third respondent/insured who remained exparte before the Commissioner is now represented by a learned counsel. On instructions, he would submit that the deceased was working under the third respondent. Such submission made in Court cannot be a substitute for evidence. Hence, this Court is rejecting the said



C.M.A.(MD)No.1242 of of 2024

submission. The factual finding however recorded by the Commissioner is not perverse.

12. The appellant has not raised any substantial question of law warranting interference with the award of the Commissioner. Hence, the appeal is dismissed. The respondents 1 and 2 are permitted to withdraw the entire compensation amount deposited by the appellant. No costs. Consequently, the connected miscellaneous petition is closed.

21.10.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. The Commissioner for Employees Compensation,
Madurai.

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



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C.M.A.(MD)No.1242 of of 2024

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.1242 of 2024
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