



C.M.A.(MD) No.675 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.09.2024

PRONOUNCED ON : 12.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.675 of 2022

and

C.M.P.(MD) No.5847 of 2022

The Divisional Manager,
New India Assurance Company Ltd.,
Divisional Office, CMTS Bhavan,
70 Feet Road, Ellis Nagar,
Madurai - 625 010.

... Appellant

Vs.

1.S.Muthulakshmi

2.Subbiah

3.R.Kanagaraj

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 30 (1) of the Employee's Compensation Act to set aside the award passed in E.C.No. 125 of 2019 on the file of the Workmen Compensation Court [Deputy Commissioner for Employees Compensation], Madurai, dated 12.05.2022.

For Appellant : Mr.N.Dilip Kumar

For R1 & R2 : Mr.K.Sudalaiyandi

For R3 : No Appearance



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JUDGMENT

The appellant challenges the award of compensation to the first and second respondents under the Employee's Compensation Act.

2. The first and second respondents filed a claim petition before the Commissioner, stating that the deceased was employed under the third respondent herein as a Collection Agent and while he was riding his two-wheeler, during the course of employment, he fell down from the two-wheeler and sustained fatal injuries.

3. The third respondent filed a counter stating that the deceased was employed as a Collection Agent under a concern by the name, 'Nachiar Finance', run by him and that the accident took place during the course of employment, and therefore, the claimants are entitled to compensation payable by the appellant herein.

4. The appellant-Insurance Company filed a counter denying the averments in the claim petition and stating that the claimants are put to strict proof of the averments made in the claim petition and that in the



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absence of any proof of employment of the deceased under the third respondent herein, the appellant would not be liable to pay compensation.

5. Before the Commissioner, the claimants examined the wife of the deceased/first claimant as P.W.1 and marked Exs.P1 to P9. The third respondent herein examined himself as R.W.1 and marked Exs.R1 to R3. The appellant examined their representative as a witness and marked the policy document.

6. The Commissioner, after taking into consideration the oral and documentary evidence, held that the first and second respondents had established that the deceased was employed under the third respondent herein; and that the accident occurred during the course of employment, and hence, the appellant is liable to pay compensation.

7. The learned counsel for the appellant submitted that the policy document would show that no separate premium was paid to cover the employees; that the claim petition and the evidence of P.W.1 would show that the deceased was only working under the 'Nachiar Finance', with



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whom the appellant had no privity of contract; that the third respondent had not proved the fact that he was running the said Nachiar Finance; and that the award of the Commissioner is unsustainable and has to be set aside.

8. The learned counsel for the first and second respondents, per contra, submitted that the Tribunal, on the basis of the evidence of P.W.1, and the third respondent held that the employee-employer relationship was established; that the Commissioner being the final-fact finding authority, his finding, unless it is perverse, cannot be interfered with in the instant appeal; and that in any case, the appellant has not raised any substantial question of law so as to warrant interference of the award by this Court.

9. The first and foremost ground raised by the learned counsel for the appellant is that the claimants had only stated that the deceased was employed in a firm called Nachiar Finance and that the appellant had no privity of contract with the said Nachiar Finance and hence not liable to pay compensation.



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WEB COPY 10. A perusal of the claim petition would show that the claimants have stated that the deceased was employed under the third respondent herein, and in brackets, the name of Nachiar Finance is mentioned. The relevant portion reads as follows:

“It is hereby submitted that the deceased workman S.Siva, was working as Collecting Agent (Nachiar Finance) under 1st party..”

11. Further, the third respondent had filed a statement before the Commissioner confirming the averments made in the claim petition that he was running the said Nachiar Finance and the deceased was employed under him. The third respondent also examined himself as a witness before the Commissioner and reiterated that the deceased was employed under him, which has not been controverted by the appellant by letting in any evidence. Hence, it cannot be held that the third respondent has nothing to do with Nachiar Finance. Merely because the name of Nachiar Finance was mentioned in brackets, it cannot be said that the employee-employer relationship of the deceased and the third respondent has not been established. In any case, in the light of the evidence let in on the



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side of the claimants and the appellant before the Commissioner, the finding of the Commissioner holding that the employee-employer relationship was established and that the deceased died during the course of employment cannot be said to be perverse.

12. The other submission made by the learned counsel for the appellant that no separate premium was paid for employees is also not acceptable, as the law has now been fairly settled that even in such cases, the insurance company would be liable to indemnify the employer.

13. Further, in the light of the above discussion, this Court is of the view that the appellant has raised only factual issues and not any question of law, much less a substantial question of law, so as to entertain this appeal, and hence, the appeal is liable to be dismissed.

14. The first and second respondents are permitted to withdraw the amount deposited by the appellant as per the apportionment fixed by the Commissioner along with the accrued interest, less the amount already withdrawn, if any.



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15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

12.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

ARS/JEN

Copy To:

- 1.The Deputy Commissioner for Employees Compensation
Workmen Compensation Court, Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

ARS/JEN

Pre-delivery Judgment made
in
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