



C.M.A.(MD).No.841 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.841 of 2019

and

C.M.P(MD) No.11100 of 2019

The Branch Manager,
Cholamandalam MS General
Insurance Company Limited,
No.41, 2nd Floor, Dape Complex,
Bharathidasan Road,
Cantonment,
Trichy – 620 001

... Appellant/2nd Respondent

-vs-

1. Soosairaj

2. Innasi Ammal

3. Leema Sugunya

... Respondents 1 to 3/
Petitioners

4. Soosairaj

... 4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of Employees Compensation Act, 1923, against the judgment and decree made in W.C.No.132 of 2014 on the file of the Commissioner for Employees Compensation (Deputy Commissioner of Labour) Tiruchirappalli, dated 12.11.2018.



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For Appellant : Mrs.K.R.Shivashankari

For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour) Tiruchirappalli, in W.C.No. 132 of 2014.

2. According to the claimants, the deceased was working as a cleaner in a Tipper Lorry owned by the first respondent and insured with the second respondent in the claim petition. Since the driver of the lorry had reported chest pain during travel, the deceased had taken over the driving from him and he had driven the vehicle. At that point of time, the deceased lost control of the tipper lorry and dashed against a Tamarind Tree on the road side. In such an accident, the first claimant's son had passed away. The claimants have contended that the deceased is a cleaner and he was earning a sum of Rs.6,000/- per month. Hence, they have prayed for a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only).



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3. The appellant/Insurance Company has filed a counter contending that the lorry which was driven by the deceased person was owned by the first respondent, who is none other than the father of the deceased person. Therefore, there is no employer-employee relationship between the deceased and first respondent. That apart, the deceased was not having a driving license, and even as per the case of the claimant he was only a cleaner. Further, he has chosen to drive the vehicle, lost control of the vehicle and met with an accident. In such circumstances, the Insurance Company is not liable to pay any compensation.

4. Though the deceased was son of the first respondent and there is no employer-employee relationship between the deceased and the first respondent, the Commissioner for Employees Compensation has proceeded to award a compensation of Rs.8,59,108/- (Rupees Eight Lakhs Fifty Nine Thousand One Hundred and Eight only). Challenging the same, the present appeal has been filed by the Insurance Company.

5. The appellant has raised the following substantial questions of law:

“i) Whether the findings of the learned Commissioner is justifiable, when there is no



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employer -employee relationship between the deceased and the first respondent?

ii) Whether the learned Commissioner is justified in entertaining the claim petition, when the claimant and the insured are the same person, which is against the principle of indemnification?

iii) Whether the learned Commissioner for Employees Compensation has committed error by fixing liability on the appellant/insurer, when the defence of absence of valid and effective driving licence on the date of accident is proved beyond reasonable doubt?

iv) Whether the findings of the learned Commissioner rendered without appreciation of the evidence and material are liable to be sustained?

v) Whether the learned Commissioner of Workmen Compensation is competent to apply the provisions of the Motor Vehicles Act to a claim under Workmen Compensation in view of the fact that the policy of insurance in question is issued under the provisions of the Motor Vehicles Act?.



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6. According to the learned counsel appearing for the appellant, the first claimant himself is the owner of the Tipper Lorry. According to him, his son was working in the said tipper lorry as a cleaner. The first claimant is also shown as the first respondent in the claim petition. Therefore, the claim petition is not maintainable without establishing the employer – employee relationship between the deceased and the first respondent. The Commissioner for Workmen Compensation was not right in arriving at a finding that the first claimant has established that his son was working as a cleaner in the tipper lorry owned by his father. Hence, she prayed for allowing this appeal.

7. Though notices were served upon the respondents and their names were printed in the cause list, they have not chosen to appear in person or through their counsel.

8. A perusal of the claim petition clearly indicates that the tipper lorry is owned by one Soosairaj, who is shown as the first claimant as well as the first respondent in the claim petition. According to him, his son was a cleaner under him and he had met with an accident and hence he is entitled to receive compensation. Mere reading of the claim petition clearly indicates that the



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deceased is the son of the tipper lorry owner and there is no employer – employee relationship between the deceased and the first respondent. That apart, the owner of the tipper lorry himself cannot be a claimant also. In such circumstances, the Commissioner for Workmen Compensation was not right in holding that the claimants have established the employer – employee relationship between the deceased and the first respondent. The Commissioner for Workmen Compensation has erroneously shifted burden upon the Insurance Company to establish the contra facts.

9. The learned counsel appearing for the appellant had relied upon the judgment of the Hon'ble Supreme Court reported in ***2007 (1) TNMAC 460 SC (Gottumukkala Appalla Narasimha Raju and others Vs. National Insurance Company Limited and another)*** wherein the Hon'ble Supreme Court has held that the husband cannot be treated as an employee of the wife unless a specific contract is produced before this Court. The said judgment is squarely applicable to the facts of the present case.

10. In view of the above said deliberations, the substantial questions of law are answered in favour of the appellant. The award of the Commissioner for Employees Workmen in W.C.No.132 of 2014 is hereby set aside.



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Accordingly, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

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

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



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R.VIJAYAKUMAR,J.

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