



C.M.A. (MD) No. 136 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2024

Pronounced on : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.136 of 2018

and

C.M.P.(MD)No.1956 of 2018

The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.3, Mittalittan Street,
Kolkatha – 700071.

...Appellant

Vs.

1. Ramuthai
2. Minor Navaneethan
3. Minor Sivarman
*(minor respondents 2 and 3 herein are represented
by mother and guardian 1st respondent Ramuthai)*
4. The Management,
M/s.Transtroy Industries Ltd.,
Having its registered Office at
No.5-4-187/334, M.S.Road
II Floor, Batcha Mansayan
Secndrabath, Andhrapradesh
Now having its DTK Project Office



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at D. Vadipatty (Periyakulam-Vadipatty
main road, Periyakulam Taluk,
Theni District, Pin 625 602.)

...Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 30(1) of Workmen Compensation Act, to set aside the award dated 06.10.2017 made in W.C.No.78 of 2013 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul, served on 12.10.2017 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.K.Appadurai

For R4 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in W.C.No.78 of 2013 dated 06.10.2017 on the file of the Commissioner of Employees Compensation, Dindigul.

2. The appellant/insurer, who was made liable to pay compensation of Rs.7,00,665/- (Rupees Seven Lakhs Six Hundred and Sixty Five only) to the respondents 1 to 3/claimants for the death of Ramakrishnan, consequent to an accident occurred on 23.03.2013, challenged the liability mulcted on it.



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3. The learned counsel appearing for the appellant would mainly contend that the deceased was working as a road roller operator only at the time of accident and the lorry bearing Registration No.TN-60-J-1483 was driven by one Chandran and hence, there was no employer-employee relationship between the victim of the road accident and the owner of the vehicle, that the deceased was not at all employed in the lorry bearing Registration No.TN-60-J-1483 and he would have travelled as an unauthorized gratuitous passenger and not in his capacity as the employee of the owner of the vehicle, that the learned Commissioner ought to have appreciated the admission of P.W.2 during the course of examination relating to employment of the deceased and employment of Chandran as the driver of the lorry concerned, that there was no specific endorsement in the driving license of the driver to drive such a vehicle, which was also not taken out by the learned Commissioner, that the learned Commissioner, without any basis and without appreciating the evidence available on record, has passed the impugned award and that therefore, the same is liable to be interfered with.

4. The learned counsel appearing for the respondents 1 to 3 would contend that the learned Commissioner, considering the evidence of P.W.2



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and P.W.3 and the documents produced by the said witnesses, has rightly come to the decision that the deceased was working under the fourth respondent-company and that there is absolutely nothing in the impugned award to be interfered with.

5. The substantial questions of law are as follows:

1. *Whether the learned Commissioner erred in deciding that the deceased was under the employment of the fourth respondent-company, in the absence of any acceptable and satisfactory evidence?*
2. *Whether the finding of the learned Commissioner that the deceased was the driver of the lorry involved in the accident while only Mr.Chandran was working as a driver of the lorry and the deceased was an operator of the road roller only is justified?*

6. It is not in dispute that the tipper lorry bearing Registration No.TN-60-J-1483 was owned by the fourth respondent-company and the same was insured with the appellant.



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7. It is the specific case of the respondents 1 to 3 that the deceased was working under the fourth respondent-company as driver, that on 23.03.2013, the deceased has accompanied the driver Chandran as cleaner / helper in the tipper lorry bearing Registration No.TN-60-J-1483, that there existed relationship of employer-employee between the fourth respondent-company and the deceased as per the Employees Compensation Act and that therefore, the respondents 1 to 3/claimants were constrained to file the above claim.

8. The defence of the appellant is that the deceased was travelling in the tipper lorry as unauthorized passenger, that the deceased was not at all a driver in the fourth respondent-company's lorry bearing Registration No.TN-60-J-1483, but he was working in the thrasher machine operator in the said company, that there is no employer-employee relationship between the fourth respondent-company and the deceased, that since there was no relationship of employer-employee between the fourth respondent-company and the deceased, the appellant/insurer is not liable for the claim and that therefore, the petition is liable to be dismissed.



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9. The respondents 1 to 3/claimants, in order to prove their case, apart from examining the first respondent/first claimant Ramuthai, have also summoned and examined the Liaison Officer of the fourth respondent-company Thiru.Iyyappan as P.W.2 and Branch Manager of Union Bank of India Thiru.D.Kevin as P.W.3. The respondents 1 to 3/claimants have exhibited 11 documents as Ex.P.1 to Ex.P.11. The appellant/insurer has examined its Senior Assistant Thiru.Gowthaman as R.W.1 and exhibited insurance policy as R.W.1.

10. The learned Commissioner, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 06.10.2017 by holding that the deceased was employed under the fourth respondent-company and that the said Ramakrishnan had died in an accident during the course of employment under the fourth respondent-company, directed the appellant to pay compensation of Rs.7,00,665/- with interest. Aggrieved by the impugned order, the insurer has preferred the present appeal.

11. As already pointed out, the only contention of the appellant/insurer is that there was no relationship of employer-employee



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between the fourth respondent-company and the deceased. The respondents 1 to 3/claimants, in their claim petition, have specifically stated that the deceased was working under the fourth respondent-company as a driver and P.W.1, in her cross-examination, would reiterate the said contentions. P.W.2, who is the liaison officer of the fourth respondent-company, in his evidence would specifically say that the deceased was working as a driver of their concern and that while the deceased was working as a cleaner in the tipper lorry bearing Registration No.TN-60-J-1483, the accident had occurred and as a result of which, he died. In cross-examination, P.W.2 would say that the deceased was working as a road roller operator and the same is a heavy vehicle and that the company alone has sent the deceased as a cleaner to the tipper lorry. As already pointed out, the respondents 1 to 3/claimants have also summoned and examined the Branch Manager of the Union Bank of India, Veerapandi Branch, where the deceased was maintaining his bank account. P.W.3 would say that the deceased was maintaining a bank account bearing Account No.04546265833 and that there are entries in the bank statement to the effect that the fourth respondent-company has paid salary to the deceased. P.W.3 has also produced the Statement of Account to



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show that the salary amount were received from the fourth respondent-company.

12. R.W.1-insurance official in his evidence would only reiterate the contentions raised in the counter statement, but in cross-examination, he would admit that they have received premium for two persons and that the deceased had not driven the tipper lorry at that time. He would specifically depose that in his chief examination affidavit, he has admitted that the deceased was working under the fourth respondent-company.

13. The respondents 1 to 3/claimants have exhibited the salary certificate of the deceased through P.W.2, wherein, it was certified that the deceased worked as a road roller operator, that he joined service on 01.09.2011 and that his basic pay was Rs.9,500/-. The respondents 1 to 3/claimants have exhibited the bank statement through P.W.3-bank official and as rightly pointed out by the learned counsel appearing for the respondents 1 to 3, there were entries of crediting salary of Rs.7,795/-. Though P.W.2 and P.W.3 were subjected to cross-examination, nothing was elicited by the appellant during their cross-examination.



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14. Considering the evidence available on record, more importantly, the evidence of P.W.2, P.W.3 and R.W.1 and also the documentary evidence produced by the said witnesses, the learned Commissioner has rightly come to a decision that the deceased was working in the fourth respondent-company at the relevant point of time.

15. Though the appellant/insurer has taken a specific stand that the deceased Ramakrishnan was not possessing valid driving license to drive heavy vehicle, it is the specific case of the respondents 1 to 3/claimants that the deceased has not driven the tipper lorry at the time of accident and he has accompanied the driver of the tipper lorry as a cleaner. It is pertinent to note that R.W.1, in his cross-examination, would admit that the deceased had not driven the tipper lorry at that time. Since the deceased was only travelling as a cleaner of the lorry, the question of deciding whether the deceased was possessing valid driving license to drive the heavy vehicle does not arise at all. Except the above, the appellant/insurer has not raised any other grounds to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.



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16. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

17. In the result, the Civil Miscellaneous Appeal is dismissed and the order passed in W.C.No.78 of 2013 on the file of the Commissioner of Employees Compensation, Dindigul is confirmed. The respondents 1 to 3/ claimants are permitted to withdraw the amount deposited with the Commissioner of Employees Compensation, Dindigul on due application. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

30.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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- To
1. The Commissioner of the Employees Compensation,
Dindigul.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.136 of 2018
and
C.M.P.(MD)No.1956 of 2018

Dated : 30.04.2024