



CMA(MD).No.159 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.07.2024

PRONOUNCED ON : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.159 of 2018
and CMP(MD).No.2354 of 2018

The Manager
National Insurance Company Limited
Shop No.466, Dr.Nanjappa Road
Gandhipuram, Coimbatore

.....Appellant/Respondent No.2

Vs.

1.Rathina

...Respondent No.1/Petitioner

2.Saroja

...Respondent No.2/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, to set aside the award dated 28.12.2017 (which was received by the Appellant Insurance Company on 03.01.2018 vide enclosed postal cover) made in E.C.No.3 of 2015 on the file of the Commissioner for Employees Compensation (Deputy Commissioner of Labour), Dindigul and be pleased to dismiss the claim as against the appellant.



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For Appellant : Mr.J.S.Murali
For R1 : Mr.M.P.Senthil
For R2 : Mr.L.Prabhu

J U D G M E N T

The present appeal has been filed by the Insurance Company challenging the award passed by the Commissioner for Employees Compensation/Deputy Commissioner of Labour, Dindigul in E.C.No.3 of 2015.

2.According to the claimant, the deceased was working as a Taxi Driver under the first respondent in claim petition. The said Taxi was insured with the second respondent/insurance company. The claimant had contended that the deceased had gone for a trip on 22.05.2014 and he was murdered by unidentified persons during his travel. An F.I.R was registered in Crime No. 69 of 2014 on the file of the Ambilikai Police Station, Dindigul District. Therefore, according to the claimant, the death has happened only in the course of employment. The claimant had further contended that the deceased was receiving a salary of Rs.8000/- per month from the first respondent.



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3.The second respondent/insurance company had filed a counter contending that some unidentified inflicted injuries on the deceased and his body was found in the private property of one Vadivel. Therefore, there is no connection between the course of employment and the incident that has taken place. He had further contended that the vehicle was not located near the deceased person, but elsewhere. He had further contended that the cause of death is only murder and it has not happened in the course of employment under the first respondent. They have also questioned the employer employee relationship between the first respondent and the deceased person. The insurance company has questioned the quantum of award as prayed for.

4.The Commissioner for Employees Compensation after considering Exhibits P1 to P15 and evidence of claimant and the police officials and also considering the policy of the vehicle, has arrived at a finding that the incident has happened in the course of employment and the claimant has established the employer employee relationship between the deceased and the first respondent. The Workmen's Compensation Commissioner has proceeded to fix the compensation amount at Rs.6,82,760/- and directed the insurance company to pay the compensation along with 12% interest per annum. This award is under challenge in the present appeal.



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5. According to the learned counsel appearing for the appellant/insurance company, the claimant has not established the employer employee relationship between the deceased and the first respondent. Unless the trip sheet is produced, it cannot be established that the death has happened in the course of employment. The body of the deceased and the insured vehicle have been recovered from different places. That apart, only a claim arising out of accident involving a motor vehicle is covered under the policy. In the present case, the insured motor vehicle was not in any way connected with the death of the deceased person. Therefore, they are not liable to pay any compensation. When it is a case of abduction and murder, the policy cannot be invoked by the owner of the vehicle to indemnify him. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondents had contended that the employer employee relationship between the claimant and the first respondent has been established under Exhibit P11-F.I.R. The deceased had taken a Car for a trip and in the course of his employment, he was murdered by unidentified persons. Therefore, the death has happened only in the course of employment. That apart, the policy that is sought to be invoked is not a workmen compensation policy, but a motor vehicle policy for a private taxi. Therefore, he prayed for sustaining the award passed by the Workmen's Compensation Commissioner.



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7.I have considered the submissions made on either side and perused the material records.

8.Under Exhibit P1, an F.I.R has been lodged by the Village Administrative Officer, Navakkani, Mandavadi Group, Ottanchathiram alleging that she had found out an unidentified male dead body at about 6.00 a.m on 23.05.2014. F.I.R has been registered on the same date at 8.00 a.m. The husband of the owner of the Taxi has lodged an F.I.R before B11, S.B.Colony Police Station, Coimbatore on 23.05.2014 as 'man missing case' at 4.00 p.m alleging that his Taxi and the driver are missing from 4.15 p.m on 22.05.2014 onwards. In the said F.I.R, the vehicle number and the fact that the deceased was employed with the first respondent is clearly mentioned. It is to be noted that this F.I.R. has been lodged by the husband of the Taxi owner even before it was made known that the driver has been murdered. Therefore, it is clear that even before the death of the Taxi driver was known, the owner of the Taxi had lodged the F.I.R identifying the deceased person as his driver. This Court is of the considered opinion that this F.I.R would categorically establish the employer employee relationship between the deceased and the first respondent in the claim petition.



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9.In Exhibit P11-F.I.R, the Taxi owner had alleged that his driver had taken a vehicle from his house on 22.05.2014 at about 8.00 a.m and thereafter, there was no communication from 4.15 p.m on the said date. When he attempted to call him through mobile, the mobile was switched off. Therefore, it is clear that the deceased person who has taken a Taxi on duty had not returned after duty and he had been murdered while he was on duty by some unidentified persons. Therefore, it is evident that the deceased had died only in the course of his employment.

10.It is the further contention of the appellant/insurance company that the policy covers only the claim arising out of accident and not murder. The learned counsel for the first respondent/claimant had relied upon a judgment of the Hon'ble Supreme Court reported in ***AIR 2000 SC 1930 (Rita Devi and others Vs. New India Assurance Co.Ltd.,)*** to impress upon the Court that the Court could award compensation even in cases of murder under Workmen's Compensation Act. The learned counsel for the claimant had further relied upon a judgment of our High Court reported in ***2006 (2) CTC 114 (Oriental Insurance Co.Ltd., Chennai Vs. D.Sakunthala and others)*** to contend that in a case of murder of a Car driver, our High Court was pleased to pass an award as against the insurance company for the murder of a Workmen during his employment.



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11. In view of the judgments of the Hon'ble Supreme Court and our High Court, this Court is of the opinion that such a contention raised by the appellant/insurance company is not legally sustainable.

12. The learned counsel appearing for the claimant had relied upon a judgment of our High Court reported in **2018(1) TN MAC 115 (Periyannan and another Vs. K.Udhayakumar and another)** to contend that for an Auto Driver, this Court has fixed the notional monthly income at Rs.9500/- for an accident that has taken place in the year 2013. In the present case, the Commissioner of Workmen Compensation has fixed the monthly income only at Rs.8000/- per month based upon the Government Order. However, in the claim petition, the claimant had mentioned that the deceased was receiving only a salary of Rs.8000/- including batta. Therefore, this Court is not inclined to consider any enhancement of compensation.

13. The learned counsel for the appellant/insurance company had contended that they will be liable only to the extent of indemnify the principal amount as per the award of the Commissioner and the interest portion has to be paid only by the employer. This proposition of law may be applicable to the policies under the Employee's Compensation Act. In the



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present case, the policy is under Motor Vehicles Act and therefore, the liability to pay interest also falls upon the shoulders of the insurance company. Such a plea is not sustainable in law.

14.In view of the above said deliberations, all the substantial questions of law are answered as against the appellant. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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05.07.2024.

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

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1. The Commissioner for Employees Compensation
/Deputy Commissioner of Labour, Dindigul
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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