



C.M.A(MD)No.1321 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1321 of 2014

Senior Divisional Manager,
The Oriental Insurance Company Limited,
Do. II, No.8, Esplanate, 4th Floor,
Chennai.

... Appellant

Vs.

1. Selvara
2. Vairam
3. The South Indian Corporation Ltd.,
Chettinadu Cement Colony,
Keelapalur, Ariyalur
(3rd respondent remained exparte before the
Lower Court)

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act 1948, to set aside the award of Rs.7,10,468/- passed in W.C.No. 127 of 2013, dated 04.07.2014, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour), Thiruchirappalli.

For Appellant	: Mr.C.Jawahar Ravindran
For R1 & R2	: Mr.N.Sudhagar Nagaraj
For R3	: No appearance



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JUDGEMENT

This appeal is filed by the Insurance Company against the order passed by the Commissioner, Workmen's Compensation, (Deputy Commissioner of Labour), Thiruchirappalli.

2. It is a case of fatal. The employment of the deceased was admitted by the owner of the company. The contention of the appellant is that there is a wilful disobedience by the deceased where he has not properly stationed the vehicle, especially, the gear was not properly handled. Based on the fact, the appellant/Insurance Company has raised substantial question of law and the appeal is admitted on the following substantial question of law.

“1. Whether the Commissioner for Workmen's compensation (Deputy Commissioner of Labour), Thiruchirappalli is correct in fastening the liability in toto with the appellant herein?

2. Whether the injured was a “Workmen” and the accident in question has “arisen in the



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course of employment” under the provisions of Workmen's Compensation Act?

3. Whether the injured was a Workman under Section 2(1)(n) of the Workmen's Compensation Act. 1923?

4. Whether that willful disobedience comprehends within its scope a deliberate and intended disobedience and involves the doing of something with the knowledge or a certainty that it is likely in a serious injury or with a reckless disregard of the consequences?”

3. The first and fourth substantial question of law can be dealt with. It is alleged that there is willful disobedience by the deceased. However, in order to prove them the Insurance Company or the employer has not deposed before the Court to substantiate the said plea. Moreover, there are no proof to the said fact. Therefore, the first and fourth substantial question of law are answered against the appellant/Insurance Company.

4. As far as the second and third substantial question of law are



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concerned, on perusing the facts and evidence, it is seen that the employment of the deceased is admitted by the parties. Therefore, the second and third substantial question of law are answered as against the appellant/Insurance company.

5. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

01.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
jbr

To

1. The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour), Thiruchirappalli.

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



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S.SRIMATHY, J.

jbr

JUDGMENT made in
C.M.A(MD)No.1321 of 2014

01.04.2024