



C.M.A.(MD) No.238 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.238 of 2014

and

M.P.(MD)No.1 of 2014

M/s.National Insurance Co. Ltd.,
Through its Branch Manager,
District Court Opposite,
Dindigul Town,
Dindigul.

... Appellant

VS.

1.Vellaithai
2.Veerammal
3.Vanarani
4.Rajeswari
5.Minor Tamilarasan
6.Minor Mathivadani
R5 & R6 – represented by their mother and guardian/R4
7.Manikandan
8.V.Murugan.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, against the judgment and decree, dated 31.12.2012 made in E.C.No.31 of 2006, on the file of



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the Deputy Commissioner of Labour/Commissioner of Employees
Compensation, Dindigul.

For appellant : Mr.P.Malini

For Respondents

for R1 : Mr.R.Mohanasundaram

for Mr.C.K.M.Appaji

for R4 to R6 : Mr.K.Raghul Priyan

for Mr.K.K.Samy

for R2, R7 & R8 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 31.12.2012 made in E.C.No.31 of 2006, on the file of the Commissioner of Employees Compensation, Dindigul.

2. Heard the arguments of the learned counsel of both sides and perused the relevant records.

3. The case as set out in the claim petition is stated in brief:

On 20.09.2004, at about 1.00 p.m., while the deceased Veeranan @ Pandi was riding Mahendra Jeep, bearing registration



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No.TMR 6921 along the main road from Mattupatti to Ganesapuram. At the point of Udaikal Rock, he lost control of the vehicle and since he was not in a position to control the vehicle, the jeep fell into the low lying area on the left side, due to which the persons travelled in the jeep sustained injuries and the driver Veeranan @ Pandi died on the spot. He had been working as a driver under the third respondent therein, who is the owner of the Mahindra Jeep. When he was driving the jeep, he met with an accident, that occurred during the course of employment. No compensation was claimed before any other Authority in this regard. The claimants, who are the dependents of the deceased, have filed this claim petition claiming compensation of Rs.10,00,000/-. The owner of the vehicle, namely, third respondent and its insurer, namely, second respondent, are liable to pay compensation to the claimants herein.

4. Despite the receipt of summons, the first respondent did not appear through counsel. After filing the counter of the second respondent therein/Insurance Company, the third respondent therein was added in the claim petition and on receipt of the



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summons, as the third respondent therein did not appear before the

Commissioner, he was also set *ex-parte*.

5. The second respondent counteracted the details of the claim petition by filing a counter to the effect that the claimants were put to strict proof of age, avocation and income of the deceased. The fact that the deceased Veeranan @ Pandi was working under the third respondent, as a driver of the jeep, is not admitted and there is no relationship between them as employer-employee. In February 2004, the third respondent purchased the said vehicle and not effected the name change in the insurance policy. The deceased did not have a valid licence at the time of accident. At the relevant point of time, the driver of the vehicle permitted more number of persons in the jeep and it was used for commercial purpose. As the policy condition was violated, the second respondent is not liable to pay any compensation to the claimants and sought for dismissal of the claim petition.

6. At trial, before the Commissioner, the fourth petitioner/wife of the deceased examined herself as P.W.1 and through her, eight



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documents were marked. Registration Certificate of the jeep (TMR 6921) is Ex.P4. The insurance policy copy of the said vehicle is Ex.P5. The Driving Licence of the deceased Veeranan @ Pandi is Ex.P6. On the second respondent side, a staff of the insurance company/Mr.Gowthaman was examined as R.W.1 and the policy conditions is marked as Ex.R1.

7. The learned Commissioner, upon consideration by framing five issues, concluded that though the name change in the policy was not effected by the third respondent, as the policy was alive at the relevant point of time, the second respondent cannot be held liable to pay compensation. It has been further held that based on the Minimum Wages Act, 1948 and G.O.Ms.No.2(d) 47, Labour and Employment Department, dated 01.08.2003, his monthly income, as driver, was fixed at Rs.3,466/- and Dearness Allowance was fixed at Rs.377/-. His total monthly income is fixed at Rs.3,843/- and compensation of Rs.4,03,361/- was awarded and for funeral expenses, an amount of Rs.2,500/- was ordered. In all, an amount of Rs.4,05,861/- was ordered as compensation.



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8. The following points arise for consideration:

'1. Whether the claimants have proved that under whom the deceased was employed?

2. Whether there was no privity of contract between the appellant and respondent No.8 whether they can be mulcted with liability?'

9. The learned counsel for the appellant/second respondent would strenuously argue that the employer-employee relationship between the seventh respondent/third respondent and the deceased was not proved. At the relevant point of time, the vehicle was used for commercial purpose and since the owner has violated the policy conditions, the appellant/second respondent/insurance company is not entitled to pay compensation.

10. She would, further, contend that originally, the claim petition was filed citing the sixth respondent/first respondent therein alone and only after filing the counter by the appellant/second respondent, the seventh respondent/third respondent/owner of the



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jeep was added by the claimants by way of filing of interim application. It is her further contention that in fact, the claimants did not know about the details of the employer at all and the said factum is not proved by them.

11. It is her further contention that by examining the staff of the insurance company/Gowthaman, the fact that the vehicle was used for commercial purpose, has duly been proved and therefore, the abovesaid order granting of compensation and fastening the liability on the appellant/second respondent therein is incorrect and liable to be set aside.

12. Per contra, the learned counsel for the first respondent/claimant would, vehemently, argue that by adding the seventh respondent/third respondent therein in view of the counter filed by the appellant/second respondent/insurance company and by filing the Registration Certificate of the jeep (TMR 6921) as Ex.P4, the employer-employee relationship was proved and he refuted the allegation that the vehicle was used for commercial purpose.



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WEB COPY 13. The learned counsel for the fourth respondent/claimant would argue on the same lines, which are set up by the first respondent/claimant. He would also state that the said award amount was not apportioned by the Commissioner.

14. The first respondent herein is the mother, the second and third respondents herein are the sisters of the deceased. The fourth respondent herein/P.W.1 is the wife of the deceased. The fifth and sixth respondents herein are the minor children of the deceased.

15. Though notices were sent to the respondent Nos.2, 7 and 8 herein/petitioner No.2 and the respondent Nos.1 and 3 have been served and their names have been printed in the cause list, none represented them.

16. A memo has been filed by the learned counsel for the appellant/insurance company stating that the notice sent to the third respondent herein was returned as she is no more and she, being the class-2 heir, no legal heir may be added subsequent to



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the death of the third respondent. Her memo is recorded.

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17. It has come on record through the evidence of P.W.1, to the effect that while her husband Veeranan @ Pandi was driving the jeep (TMR 6921), which belongs to the seventh respondent/third respondent, along the main road from Mattupatti to Ganesapuram on 20.09.2004, at about 1.00 p.m., at the place of Udaikal Rock, strangely the driver lost control of the vehicle and turned it to the left side and fell down on the low lying area, due to which the persons travelled in the jeep sustained injuries and her husband succumbed to the injuries on the spot itself. To corroborate the said fact, Ex.P1/First Information Report has been marked.

18. It is the main contention of the insurance company that there is no employer-employee relationship between the deceased and the seventh respondent/third respondent. At the time of filing, the sixth respondent/first respondent was shown as the owner of the vehicle. After filing the counter by the appellant/second respondent, on application by the claimants, the seventh



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respondent/third respondent in whose name the Registration Certificate stands, was added in the claim petition. At the relevant point of time, the Registration Certificate of the jeep stands in the name of the seventh respondent/third respondent. Therefore, it has to be concluded that he was the employer of the seventh respondent/third respondent at the relevant point of time. Therefore, the contention of the learned counsel for the appellant to the effect that the employer-employee relationship was not proved falls on the ground.

19. The next limb of her argument is that the vehicle was used for commercial purpose at the relevant point of time. As per the said fact, she would state that R.W.1/Gowthaman, staff of the appellant/second respondent has been examined. It is the evidence of R.W.1 that though the third respondent has purchased the jeep (TMR 6921) on 11.02.2004 itself, in the insurance policy, the change of name was not effected and at the relevant point of time the vehicle was used for commercial purpose, which is against the conditions of the policy and she would further state that in view of the same, the insurance company is not liable to pay compensation



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to the claimants herein.

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20. As per Section 157(1) of the Motor Vehicle Act, 1988, if an owner of the motor vehicle sells his vehicle to another person, in respect of which insurance was taken, then the certificate of insurance and the policy prescribed in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

21. Therefore, it has been stated that when a vehicle is transferred by the owner to another person, the policy is also deemed to have been transferred as the vehicle alone is insured not the owner. On a careful perusal of Ex.P5/Insurance Policy, it appears that at the relevant point of time, the insurance policy was alive.

22. Relying upon the testimony of P.W.1, R.W.1 coupled with both sides documents, it is concluded that the deceased Veeranan @ Pandi was working as a driver under the seventh



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respondent/third respondent and while he was driving the vehicle, he met with an accident that occurred during the course of employment and died.

23. It is the evidence of R.W.1/Gowthaman, staff of the insurance company that at the relevant point of time, the vehicle, namely, jeep (TMR 6921) was used for commercial purpose. Admittedly, he is not an eyewitness and hence, his evidence to that effect cannot be relied upon for the purpose of proving the factum that the vehicle was used for commercial purpose. Therefore, based on the aforesaid discussions and observations, the grounds raised by the learned counsel for the appellant are not acceptable. Hence, the points raised, are answered in favour of the claimants.

24. In the result,

- i. The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. The compensation of Rs.4,05,861/- awarded by the Commissioner is confirmed.
- iii. The first respondent/mother, the second respondent/sister



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and the fourth respondent/wife are entitled to Rs.30,000/-, Rs.10,000/- and Rs.2,15,861/-, respectively and the fifth and sixth respondents/children are entitled to Rs.75,000/- each, along with the proportionate interest and costs, after adjusting the amount, if any amount is already withdrawn, by filing necessary application before the Commissioner.

iv. The fifth and sixth respondents/children, then minors in the year 2006, on appropriate application, are at liberty to withdraw their share amount with proportionate interest.

20.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Commissioner of Employees Compensation, Dindigul.

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

R.KALAIMATHI,J

apd



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