



C.M.A.(MD).No.465 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.465 of 2014

and

M.P(MD) No.1 of 2014

The Royal Sundaram Alliance Insurance Company Limited,
45 & 46, Whites Road,
Chennai.

Represented by its Branch Manager. ... Appellant/2nd Respondent

-VS-

1. R.Sakthi
2. Minor.Anusuya
3. Minor.Santhosh
(Minor respondents 2 and 3 are
represented by 1st respondent)

4. Muthu
5. Pachaiammal ... Respondents 1 to 5/Petitioners

6. Kandhasamy ... 6th Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against the order dated 21.01.2013 made in W.C.No.158 of 2009 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) Trichy.



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For Appellant	: Mr.M.Jerin Mathew
For R1 to R4 &R6	: No appearance
For R5	: dismissed

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.158 of 2009 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) Trichy, wherein, the respondents 1 to 5 have preferred the claim petition before the Tribunal. The Tribunal has awarded a sum of Rs.3,96,620/- (Rupees Three Lakhs Ninety Six Thousand Six Hundred and Twenty only) and directed the appellant/2nd respondent to pay the said amount along with interest at the rate of 12% p.a within a period of 30 days. As against the order passed by the Tribunal, the appeal has been preferred by the appellant/second respondent.

2. The brief facts of the averments made in the petition before the Tribunal are as follows:

The petitioners 1 to 5 are the legal heirs of the deceased Raja who was working under the first respondent. On 28.02.2009, when the deceased Raja



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was working as driver in the first respondent Lorry bearing Registration No.TN-28-K-3143, after unloading the goods, due to continuous work, he suffered heart attack when he took rest. At that time, another driver came to him and found him dead in the lorry itself. Therefore, the death was happened during the course of employment and he was working under the first respondent and the said lorry was insured with the second respondent. Thereby, the petitioners are claiming a sum of Rs.10,00,000/- (Ten Lakhs only) towards compensation.

3. The brief averments in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts. Hence, the petition is liable to be dismissed. No proof was produced to show that the deceased was working with the first respondent. The accident had not at all happened in the course of employment as the deceased is not working as a driver under the first respondent. There is no relationship as employer and employee between the deceased and first respondent. Therefore, the second respondent is in no way liable to pay compensation to the petitioners.



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4. Before the Tribunal, in order to prove the case of the petitioner, the first petitioner was examined P.W.1 and marked Exhibits P.1 to P.8. On the side of the respondents, no witness was examined and documents were marked as Ex.R.1 and R2. After hearing the both sides and perusing the records, the Tribunal has awarded a sum of Rs.3,96,620/- (Rupees Three Lakhs Ninety Six Thousand Six Hundred and Twenty only) towards compensation with interest at the rate of 12% p.a and the second respondent was directed to pay the amount within 30 days.

5. Aggrieved over the above said order, the present appeal has been preferred by the appellant/second respondent, on various grounds including the substantial questions of law.

6. The learned counsel appearing for the appellant would contend that there is no employer-employee relationship between the deceased and the first respondent and he has not died during the course of the employment and while after his employment, he died and thereby, the employer is in no way liable to pay compensation to the petitioner. Before the Tribunal the appellant/ 2nd respondent has no witness examined and only marked Ex.R1



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and R2, but the Tribunal failed to consider those documents and without any proof, fixed salary of the deceased as Rs.4,000/- per month. The Post-Mortem Certificate also revealed that the deceased died due to heart attack and the deceased had not died due to the personal injury caused by the accident arising out of and in the course of employment. But the Tribunal, without considering the above said facts, awarded the compensation by directing the appellant/second respondent to pay the amount.

7. There is no representation on the side of the respondents.

8. This Court heard the learned counsel for the appellant and perused the materials on record.

9. In this case, the appeal was admitted on the following substantial question of law:

“a. Whether the Heart Attack suffered by the Workmen could be termed as personal injury caused by an accident arising out of and in the course of employment?

b. Whether the Heart Attack suffered by the



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deceased while he was sleeping could be linked to his employment?

c. Whether the Lower Authority was justified in determining the salary of the deceased notionally without any materials to substantiate the same?

d. Whether the Lower Authority was justified in applying relevant factor in the absence of any age proof?.”

10. As far as the substantial question of law is concerned, “Whether the heart attack suffered by the workmen could be termed as personal injury caused by an accident arising out of and in the course of employment”, the deceased was working under the first respondent as per the evidence adduced by the respondents/petitioners it is revealed that the deceased died during the course of employment i.e., after unloading the goods, due to heavy work, he took rest while he was taking rest, he died due to heart attack and thereby, he suffered heart attack due to the work pressure and thereby the deceased could be termed as personal injury caused by an accident arising out of and in the course of employment, the substantial question of law is answered.



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11. In this connection, the learned counsel appearing for the respondents/petitioners submitted the judgment in the case in **2000 ACJ – 2587 (Oriental Insurance Company Limited Vs. Nagaraj and others)**, wherein this Court has held in paragraph Nos. 9 to 11 as follows:

9 . For making out a Claim under the Act, it is necessary to establish definite casual connection between his work and the accident leading to the death. Observing that the mere fact that death had taken place while the deceased was on job is not enough and that onus of proof lies upon the Claimant in the decision reported in MANU/SC/0310/1969 : (1970)ILLJ16SC (Mackinnon Machenzie and Co. (P) Ltd. v. Ibrahim Mahmmmed Issak), the Supreme Court has held as follows:

To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of employment" mean in the course of the work which the workman is employed to do and which is incidental to it. The words "arising out of employment" are understood to mean "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless, engaged in the duty owing to the Master, it is reasonable



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to believe the workman would not otherwise have suffered". In other words, there must be casual relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such" to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises out of employment. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for consideration must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.

10. In the Sakuntala Chandrakanth case, the cleaner of the vehicle died due to massive heart attack. In the said case before the Supreme Court, nothing has been brought on record to show that heart attack was caused while doing any job. Even according to the employer, the deceased at the relevant point of time was merely getting down from the vehicle. The driver of the vehicle, who was brother of the deceased was the best evidence to speak as to under what circumstances death was caused or death occurred. Driver of the vehicle did not examine himself. Doctor who performed the postmortem was also not examined. Under such circumstances, the Supreme Court has observed that there must be some evidence that the employment contributed to the death of the deceased and it is



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required to be establish that the death occurred during the course of employment. In the said case, since evidence was found to be lacking and best witness was not examined, Supreme Court has held as follows:

26. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

11. As observed by the Supreme Court, circumstances must exist to establish that the death was caused by reason of failure of heart and it was because of strain of work. Stress and strain resulting in sudden heart failure is not a matter of presumption. Each case is therefore to be considered on its own facts and no hard and fast rule could be laid down therefore.”

12. The available evidence shows that the deceased was taking rest after unloading goods and he was suffering from heart attack. The Tribunal after referring the said judgment of this Court and after careful perusal of the records and the evidences adduced by the parties came to a fair conclusion that the deceased died during the course of employment and the death was arising out of and in the course of employment.



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13. The 2nd substantial question of law is concerned, it is an admitted fact that the deceased died while he was in employment and the deceased died due to the heart attack while he was taking rest. The available evidences shows that the deceased after unloading the goods while he was taking rest suffered heart attack and died, the heart attack was due to his continuous work and thereby the said heart attack could be linked with his employment. This Court also in the previous point elaborately discussed and decided that the deceased died due to the heart attack while he was in the course of employment. Thus, the substantial question of law is answered.

14. As far as the 3rd substantial question of law is concerned, the Tribunal has taken the salary of the deceased as Rs.4,000/- (Rupees Four Thousand only). The petitioners have pleaded and adduced evidence that the deceased was earning a sum of Rs.4,000/-, but the Tribunal considering the nature of work and cost of living, fixed the fair amount as monthly income of the deceased. The respondents' have not adduced any contra evidence to rebut the evidence on petitioners side. The first respondent being the employer has not adduced any evidence and not deny the petitioners side evidence. The second respondent being the insurer of the vehicle fail to examine any



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witnesses in respect of salary of the deceased. Therefore, the above amount awarded by the Tribunal is reasonable. Therefore, the award passed by the Tribunal is just and fair compensation. The 3rd substantial questions of law is answered accordingly.

15. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2024

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

1. The Commissioner of Workmen's Compensation
(Deputy Commissioner of Labour)
Trichy.

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



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P.DHANABAL,J.

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