



C.M.A. (MD) No. 623 of 2014

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Dated: 19.01.2024

CORAM:

THE HON'BLE MR. JUSTICE P. DHANABAL

C.M.A.(MD) No. 623 of 2014

and

M.P(MD) No. 2 of 2014

Cholamandalam MS General Insurance
Company Ltd.,
2nd Floor, "Dare House",
No. 1, N.S.C. Bose Road,
Chennai 600 001.

... Appellant / Respondent No. 3

Vs.

1. A. Sermakani

2. Minor Nisa Nanthini

3. Minor Sathiya Prakash

*(Minor R2 and R3 represented by their
mother the 1st respondent as guardian)*

4. S. Palavesammal

... 1 to 4 Respondents / Petitioners

5. The Manager,

M/s. A.T.C. Tires Ltd.,

Gangaikondan,

Tirunelveli Taluk & District.

6. Coromandal Engineering Co. Ltd.,

"Parry House" 3rd Floor,

No. 43, Moore Street,

P.B. No. 1698, Chennai - 600 001.

... 5 and 6 respondents / 1 and 2 respondents



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Prayer : This Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, to set aside the award dated 24.12.2012 made in W.C.No.70 of 2010 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli served on 02.07.2013 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasaragavan

For R1 to R3 : Mr.T.Selvakumaran

For R5 : Mr.C.Sankar Prakash

For R4 and R6 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the petitioner to challenge the order passed by the learned Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, in W.C.No. 70 of 2010 dated 24.12.2012, wherein the respondents 1 to 4 herein filed claim petition for compensation for the death of one Ammasi who was working under the employment of the fifth and six respondents.



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2. Brief averments of the petition filed before the Tribunal are as follows:

One Ammasi was working under the 1 and 2 respondents as worker and he was doing marble polish. While so, on 01.02.2009, when the deceased Ammasi was working under the 1 and 2 respondents, at about 1.30 p.m., due to stress and work load, he went unconscious and fell down. Thereafter, he was taken to hospital. There, the Doctor declared that already he died. The deceased died due to work load and stress. The deceased was aged about 30 years on the date of accident and also he was earning a sum of Rs.6,000/- per month. The petitioners are the legal heirs of the deceased. The third respondent is the insurance company. Therefore, the respondents are liable to pay compensation to the petitioners.

3. The brief averments of the counter filed by the third respondent are as follows:

This petition is not maintainable either in law or facts. The averments made in the petition that the deceased was working as a worker and drawn a salary of Rs.6,000/- are all denied. The petitioners are put to



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strict proof of the cause of death. The deceased was not died due to the work load and the cause of death is not related to the work of the deceased. Therefore, this respondent is no way liable to pay compensation to the petitioners. The death was a natural death and not related to the work. Since the death was natural there is no coverage of policy. Hence the respondents are not liable to pay the compensation.

4. The respondents 1 and 2 were set exparte before the Tribunal. On side of the petitioners they examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P6. On the side of the third respondent R.W.1 was examined and marked Ex.R1. After hearing both sides and perusing the records, the Deputy Commissioner of Labour has passed an award of Rs.4,15,960/- and directed the third respondent to pay the amount to the petitioners within a period of 30 days.

5. Aggrieved over the above said order, the present application is filed by the third respondent insurance company on various grounds. The main contention of the third respondent is that the death of the deceased is no way related to the work, and there is no coverage of policy.



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6. Learned counsel for the appellant would contend that the deceased was working under the 1 and 2 respondents, who are the employers of the deceased, have not supported the case and were said ex-parte before the Tribunal and the employer-employee relationship also not proved by the petitioners and further as per the medical records, the deceased died due to heart attack and the same is not related to his work. The petitioner was not examined any Doctor to prove his contention. In spite of that, the Tribunal has awarded compensation by directing the appellant / third respondent to pay the amount. Therefore, the order passed by the Tribunal is liable to be set aside.

7. Learned counsel appearing for the respondents 1 to 4 / petitioners would contend that the deceased was working under the employment of respondents 1 and 2. Respondents 1 and 2 were taken policy with the third respondent and there is a coverage for the employees. The deceased died during the course of employment. Further the deceased died due to heavy work load and the stress due to the work. Thereby, the respondents are liable to pay compensation to the petitioners. In order to prove the



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case of the petitioners, they have examined P.W.1 and 2 and marked Ex.P.1 to Ex.P.6. Ex.P2 clearly shows that the deceased died due to heart attack and which caused due to the stress and heavy work. Therefore, the Tribunal after taking into consideration of these aspects, rightly awarded a compensation by directing the appellant / third respondent to pay the above said amount. Further learned counsel appearing for the respondents 1 to 4, relied upon a judgment in the case of ***Divisional Manager, Royal Sundram Alliance Insurance Company Limited, Chennai -14, Vs. Naveetham and others*** reported in ***2011 (2) TN MAC 171.***

8. This Court had heard both sides and perused the records. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

9. In this case, there is no dispute with regard to the employer - employee relationship. The employers who arranged as respondents 1 and 2 had not appeared before the Tribunal and they were set ex parte. There



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is no contravention that the appellant company is the insurer and the policy was also in force on the date of death of the deceased. Further, there is no contravention with regard to the quantum of the amount awarded by the Tribunal. The only ground raised by the appellant / insurance company is that the death was not related to the work of the deceased.

10. On perusal of Ex.P2, shows that the deceased died due to heart attack and the same was not denied by the appellant / insurance company. According to the respondents 1 to 4, the deceased died due to heart attack and which caused due to heavy work and stress. Though the petitioners have not examined any Doctor, the death has been proved that deceased died due to heart attack. The deceased also died during the course of employment. The petitioners have filed affidavit stating that the deceased died due to heavy work. The Tribunal also in this matter elaborately discussed and came to a fair conclusion that the deceased died due to heart attack. The heart attack also due to stress on continuous work.



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11. In this context, learned counsel appearing for the 1 to 4 respondents also produced judgment reported in ***Divisional Manager, Royal Sundram Alliance Insurance Company Limited, Chennai -14, Vs. Naveetham and others*** reported in ***2011 (2) TN MAC 171***, wherein this Court had held as follows:

"7. Admittedly, the deceased was driving the lorry with load of urea from Tuticorin to Arakonam and was supposed to travel a long distance. There is no evidence that there was any alternate driver in the vehicle to cover such a long distance. Naturally, there will be stress on his body and mind, which would have developed the chest in. Therefore, I am of the considered view that the developing of chest pain by the deceased while discharging his duty as a driver is only on account of stress and strain during the course of his employment. The heart attack caused to the deceased could very well be attributed to the nature of job. In the circumstances, there is causal connection between the death and the employment of the deceased. Therefore, the learned Deputy Labour Commissioner-II for Workmen's Compensation is justified in awarding a sum of Rs.3,76,300/- as total compensation to the Claimants."



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12. On careful perusal of the judgment, it is clear that if the deceased died while discharging his duty, due to chest pain, on account of stress, during the course of employment, there would be causal connection between the death and the employment of the deceased. In the case on hand also, according to the petitioners, during the course of employment, the deceased died due to stress of the work.

13. Therefore, in view of the above said discussion and in view of the judgment, this Court is of the opinion that the Tribunal has correctly awarded compensation and fixed the liability on the appellant and the compensation is just and fare compensation. Therefore, this Court has no warrant to interfere with the order passed by the learned Tribunal.

14. In the result, this Civil Miscellaneous Appeal is dismissed, no costs and the award dated 24.12.2012 made in W.C.No.70 of 2010 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, is confirmed. The appellant / third respondent is directed to deposit the award amount with proportionate interest at the rate of 7.5% per annum, as ordered by the



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Tribunal, within a period of two months from the date of this order, if not already deposited. Respondents 1 to 4 herein / Claimants, are at liberty to withdraw the said amount as and when deposited, together with interest and costs by filing application before the Tribunal. Consequently connected miscellaneous petition is closed.

19.01.2024

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

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To:

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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