



C.M.A.(MD).No.700 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.700 of 2014

and

M.P(MD) No.1 of 2014

M/s.United India Insurance Company Limited,
Kannathur Shopping Complex,
Kallarkutti Road,
Adimalai – 685 561.

... Appellant/2nd Respondent

-VS-

1. R.Vasuki

... 1st Respondent/Petitioner

2. C.Pommaian

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against the order dated 31.05.2012 made in W.C.No.93 of 2003 on the file of the Deputy Commissioner for Workmen's Compensation, Tirunelveli.

For Appellant
For R1
For R2

: Mr.C.Jawar Ravindaran
: Mr.V.B.Sundhareshwar
: No appearance



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.93 of 2003 on the file of the Deputy Commissioner for Workmen's Compensation, Tirunelveli, wherein, the first respondent herein has filed a petition claiming compensation for the death of the first respondent's/petitioner's husband who was working under the second respondent herein, who died during the course of employment.

2. The Tribunal has awarded a sum of Rs.2,17,644/- (Rupees Two Lakhs Seventeen Thousand Six Hundred and Forty Four only) towards compensation along with interest at the rate of 12% p.a and directed the second respondent/ Insurance Company to pay the amount to the petitioner within 30 days. As against the order passed by the Tribunal, the present appeal has been preferred by the appellant/second respondent.

3. Before the Tribunal, the 1st respondent/petitioner has filed a petition alleging that her husband Ramasubbaiah was working under the 2nd respondent/first respondent as a driver. While so, on 30.05.2003, when the



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deceased Ramasubbaiah was driving the Lorry bearing Registration No.TDT-3546 belonging to the second respondent, insured with the appellant/second respondent, at that time, when the lorry was proceeding near Kovilpatti he developed chest pain and thereby he stopped the vehicle near Kovilpatti Railway Station. Immediately, he was taken to the hospital through Hari Balakrishnan and the Doctor had given first aid and advised him to take rest. While he was taking rest in his house, on the same day during night hours he suffered heart attack and immediately he was admitted in the hospital and then died at about 11.50 p.m. The death was occurred due to the continuous work and due to stress and strain. The death was occurred when he was working under the first respondent as driver and he died in the course of employment. Therefore, the petitioner is claiming compensation.

4. The brief averments in the counter filed by the 2nd respondent/first respondent are as follows:

The averments that the deceased was working under the first respondent and he died in the course of employment and his monthly income all are denied. The second respondent herein is not the owner of the vehicle and on 20.12.2002 the vehicle was sold to one Pandi, Jeevanagar, Madurai.



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Hence, from 20.12.2002, the said Pandi is the owner of the vehicle.

Therefore, the deceased was not working under the second respondent/first respondent and there is no relationship between the second respondent/first respondent and the deceased as employer and employee. Therefore, the petition is liable to be dismissed.

5. The brief averments in the counter filed by the appellant/second respondent are as follows:

The petition is not maintainable either in law or on facts. The appellant/second respondent is not liable to pay any compensation to the first respondent/ petitioner. At the time of accident, the first respondent Lorry was not insured with the second respondent. The averments made in the petition that the deceased died due to heart attack because of his continuous work is not correct. The death is not related to the employment of the deceased. There is no relationship between the second respondent/first respondent and deceased as employer and employee. Hence, the petition is liable to be dismissed.



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6. Before the Tribunal, on the side of the the petitioner, PW.1 and P.W2 were examined and documents Ex.P.1 to Ex.P.6 were marked. On the side of the respondents, R.W.1 was examined and documents Ex.R.1 and R.2 were marked.

7. The Tribunal after hearing both sides and perusing the records, has awarded a sum of Rs.2,17,644/- (Rupees Two Lakhs Seventeen Thousand Six Hundred and Forty Four only) towards compensation along with interest at the rate of 12% p.a and directed the appellant/second respondent/ Insurance Company to pay the amount to the petitioner within 30 days. As against the order passed by the Tribunal, the second respondent has preferred the appeal on various grounds.

8. The learned counsel appearing for the appellant would contend that the deceased was not working under the 2nd respondent/first respondent and thereby there is no relationship as employer and employee between the second respondent/first respondent and the deceased. Moreover, the death was not related to the employment and it is the natural death and the deceased died in his residence. The petitioner has not proved the relationship between



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the second respondent/first respondent and the deceased as employer and employee. But the Tribunal without considering the evidences adduced by the respondents erroneously held that the first respondent/petitioner has proved the relationship of employer and employee and awarded a sum of Rs.2,17,644/- (Rupees Two Lakhs Seventeen Thousand Six Hundred and Forty Four only) towards compensation by directing the appellant/second respondent to pay the award amount. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the first respondent/petitioner would contend that the deceased was working as driver under the second respondent/ first respondent and while he was driving the vehicle, due to the stress and strain and continuous work, he developed chest pain and immediately he was taken to hospital for first aid and thereafter, as per the advise of the Doctor when he was taking rest in his house again chest pain was developed and he died due to heart attack. In order to prove the case of the first respondent/petitioner, she examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.6. P.W.1, who is the wife of the deceased, has deposed about the employment of the deceased under the second respondent/first



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respondent. P.W.2- Doctor, deposed about the treatment given to the deceased. Further, he has also given a Certificate to that effect. Therefore, based on the above said documents and the evidence adduced by the petitioner and the doctor, the Tribunal has correctly awarded the amount and directed the second respondent to pay the amount. Therefore, the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.

10. This Court heard both sides and perused the records. Upon hearing both the sides and perusing the records, the points for determining in this appeal is whether any substantial question of law involved in this case.

11. In this case, according to the appellant, there is no relationship between second respondent/first respondent and the deceased as employer and employee and the deceased has not died in the course of employment and the death has not occurred related to employment of the employee.

12. In this context, P.W1, wife of the deceased categorically deposed about the employment of the deceased under the second respondent/first respondent and he had remained *ex-parte*. The competent witness to speak



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about the employment of the deceased is the second respondent/first respondent. But he has not adduced any evidence. Per contra, appellant alone has examined their official as R.W.1 and he is not a competent witnesses to speak about the employment of the deceased. Further, on the side of petitioner, he has examined P.W.2 –Doctor, who was working at Kovilpatti Government Hospital, and he deposed that when he was working as Superintendent at Government Head Quarters Hospital, Kovilpatti on 30.05.2003 at about 11.30 a.m, and when he was returning from jail visit some of the lorry drivers stopped the vehicle and asked him to give first aid to the lorry driver and immediately he examined him in the lorry and thereafter he gave first aid and advised him to consult the specialist and also advised him to take bed rest. Again on the same day at about 11.30 p.m, the said lorry driver came for examination and while he was examining him he died at about 11.50 p.m hours. On his examination he opined that he died due to cardiac arrest and to that effect he has also gave Ex.A.6 – Medical Certificate. The said Cardiac arrest attack was due to heavy work load.

13. Therefore, on a careful perusal of evidences of P.W.1 and P.W.2 and documents Ex.P1 to Ex.P6 it is clear that the deceased was working in the



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lorry bearing Registration No.TDT-3546 and the deceased was examined by P.W.2 – Doctor and he died due to the Cardiac Arrest. In order to rebut the evidences, on the side of the appellant/second respondent no contra evidence has been adduced and thereby the evidence of the petitioner side will be acceptable. Therefore, the first respondent/petitioner has proved that the deceased was employed under the second respondent/first respondent and during the course of employment he died due to the cardiac arrest due to heavy work load.

14. The learned counsel appearing for the appellant has relied upon the following judgments:

1. 2006 (2) TNMAC Page 255 (SC) – (Sakuntala Chandrakant Shreshti vs- Prabhakar Maruti Garvali).

2. 2006 (2) TNMAC Page 461 (SC) – (Jyothi Ademma Vs.Plant Engineer).

3. 2008 (1) ACC Page 359 (MHC) – (M/s.Oriental Insurance Company Limited Vs.Chinnapillai).

4. 2010 (1) TNMAC Page 131 (SC) – (Roshida Haroon Kupurade Vs.OIC).



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5. 2010 (1) ACC Page 231 (MHC) – (M/s. National Insurance Company Limited Vs-Santhamani).

6. 2010 (2) TNMAC Page 377 (MHC) – (S.Mahalakshmi Vs. Tamil Nadu Cenents Corporation).

7. 2011 (2) ACC Page 398 (HPHC) – (Ram Dev Puri Vs.Trishla Devi).

15. On a careful perusal of the above judgments this Court is of the view that they will not applicable to the present case because the petitioner, by examining herself and the Doctor, clearly proved the relationship between the second respondent/first respondent and the deceased as employer and employee and the deceased died during the course of employment due to the heart attack.

16. In this context, the Tribunal also categorically discussed about the evidences adduced on both sides and came to a fair conclusion hence the award passed by the Tribunal is just and fair compensation. Therefore, there is no infirmity or perversity found in the order of the Tribunal. In this case there is no substantial question of law involved and as per Section 30 of Workmen's



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Compensation Act, the appeal would lie only on the substantial question of law. Therefore it is clear that the appeal would lie only as against the substantial question of law and in this case there is no substantial question of law involved and the grounds raised by the appellant are all on factual aspects. Therefore, this appeal has no merit and the same is liable to be dismissed.

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

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

1. The Deputy Commissioner for Workmen's Compensation,
Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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