



C.M.A(MD)No.33 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.33 of 2022 and
C.M.P(MD)No.287 of 2022

The Manager,
Cholamandalam MS General Insurance
Company Limited,
Rushmi Towers, IT Floor,
No.1, Village Road, Nungampakkam,
Chennai – 600 034.

... Appellant

Vs.

1.Velliyammal
2.Minor Lathika
3.Minor Hemanath
4.Rasu

(2nd & 3rd minor respondents are
represented by their Mother and
Guardian 1st Respondent herein).

5.S.Manikandan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30(1) of Employees Compensation Act, 1923, against the fair order, dated 20.03.2019, made in W.C.No.25 of 2017, on the file of the Commissioner for Employees Compensation, Dindigul.



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C.M.A(MD)No.33 of 2022

For Appellant : M/s.K.R.Shivashankari
For R1 to R4 : Mr.N.Sudhagar Nagaraj
R2 and R3 minors : Represented by R1
For R5 : Mr.K.Suresh Kumar

JUDGEMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal. It is a case under Workman Compensation Act.

2.The contention of the Insurance Company is that the 5th respondent herein is the owner of the vehicle who has submitted a letter stating that the deceased was not employed by him and the alleged vehicle was not involved in any accident. But the contention of the claimants is that the 5th respondent is the employer. It is seen that the petitioner has also not stated for whom the deceased had carried the vegetables. If this is stated the issue could be decided. The Tribunal has erred in coming to the conclusion by relying on the letter submitted by the 5th respondent, since the veracity of the letter ought to be marked through the 5th respondent but the 5th respondent had remained ex-parte after submitting the alleged letter.

3. Therefore, this Court is of the considered opinion that the case ought to



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be remitted back for reconsideration. However, the claimants cannot suffer, hence the claimants are allowed to withdraw 1/3rd of the award amount. For the balance amount, the Commissioner shall allow the parties to contest as per law. The Commissioner is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this judgment.

4. The Insurance Company has already deposited the entire amount (Rs. 8,36,920/-) along with 12% interest and costs, hence, the claimants are entitled to withdraw 1/3rd of the award amount (i.e., Rs.2,78,974/-) with 12% interest and costs. All the claimants are entitled to equal share in the above said Rs.2,78,974/- with proportionate accrued interest and costs. The Commissioner of Employees Compensation, Dindigul, is directed to deposit the shares of the minor children in the name of the minor children (equal share) in a Nationalized Bank until the children attain majority or until the order is passed by the Tribunal in this case which is remitted back to the Tribunal. The first respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. The Insurance Company shall pay the above said 1/3rd of the award amount with 12% interest and costs and recover 50% of the same from the 5th respondent, since 50% liability is fixed on the 5th respondent and 50% liability is



C.M.A(MD)No.33 of 2022

fixed on the Insurance Company.

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5. With the above said observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2024

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

Tmg

To

- 1.The Commissioner for Employees Compensation,
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.33 of 2022

S.SRIMATHY, J.

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C.M.A(MD)No.33 of 2022

01.02.2024