



CMA(MD).No.229 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2024

PRONOUNCED ON : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.229 of 2018
and CMP(MD).No.3433 of 2018

The Manager
New India Assurance Company Ltd.,
674, Periyakulam Road
Theni District 625 531

.....Appellant/Respondent No.2

Vs.

1.M.Deivamani

2.D.Logarani ...Respondents Nos.1& 2/Petitioner Nos. 1 & 2

3.M.Ananthan3rd Respondent /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, to set aside the order passed by the learned Employees Compensation Commissioner's Tribunal/Deputy Commissioner, Dindigul in W.C.No.92 of 2014 dated 29.11.2016 and dismiss the same as against the appellant.



For Appellant : Mr.N.Dilip Kumar
For R1 & R2 : Mr.M.P.Senthil
For R3 : No appearance

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the award passed by the Commissioner under the Workmen's Compensation Act/Deputy Commissioner, Dindigul in E.C.No.92 of 2014 primarily questioning the employer employee relationship.

(A)Factual Matrix:

2.According to the claimants, the deceased was working as a driver under the first respondent and earning a sum of Rs.8000/- per month as salary. He had taken a vehicle on 03.01.2014 and while returning, when he was washing the Car, he got himself entrenched in the mud and passed away. Since he had died in the course of the employment, the first respondent is liable to pay compensation and in turn the second respondent insurance company. The claimants had prayed for a compensation of Rs.10,00,000/-.

3.The second respondent had filed a counter contending that the first respondent is not the owner of the vehicle and he had already sold the said vehicle to one Senthilkumar on 30.11.2013. That apart, the F.I.R was registered by the father of the deceased and in the said F.I.R, he has specifically stated that the father of the deceased is the owner of the Car.



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Therefore, there is no employer employee relationship between the deceased and the first respondent. In such circumstances, the insurance company is not liable to pay any compensation.

4.The first claimant has examined himself as PW1 and he has marked Exhibits P1 to P11 documents. On the side of the second respondent, a legal notice addressed to the first respondent and the reply sent by him are marked as Exhibits R1 and R2.

5.The Tribunal after considering the oral and documentary evidence has arrived at a finding that since the first respondent has not appeared before the Court, it has not been proved that he had sold the vehicle to one Senthilkumar. The Tribunal further found that as on date on the accident, the vehicle continued to be registered in the name of the first respondent and therefore, the deceased had worked as a driver only under the first respondent.

6.The Commissioner had further found that the deceased had died in the course of employment. The Tribunal had fixed the compensation at Rs.8,46,000/- and directed the insurance company to satisfy the award. Challenging the said award, the present appeal has been filed by the insurance company.



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(B).Submission of the counsels:

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7. According to the learned counsel for the appellants, the father of the deceased has lodged the F.I.R which is marked as Exhibit P1. In the said F.I.R, he has specifically contended that he is the owner of the Car and he had entrusted the vehicle to his son to drive the Car to earn his livelihood. Therefore, it is clear that there are no employer employee relationship. Merely because the vehicle stands in the name of the first respondent, it cannot be construed that there is an employer employee relationship between the deceased and the first respondent. Further, the first respondent has sent a reply notice under Exhibit R1 to the effect that he has already sold the vehicle. In such circumstances, the Commissioner was not right in directing the insurance company to satisfy the award.

8. Per contra, the learned counsel appearing for the claimants had contended that Exhibit P2 -R.C.Book, Exhibit P3-Policy are all standing in the name of the first respondent. Merely because the F.I.R states that the father of the deceased is the owner of the vehicle, it cannot be construed that the vehicle is not owned by the first respondent. He had further contended that Exhibits R1 and R2 have been created by the insurance company for the purpose of this claim petition. Hence, he prayed for sustaining the award passed by the Commissioner.



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9.I have considered the submissions made on either side and perused the material records.

(C).Discussion:

10.The father of the deceased, namely the first claimant had lodged the F.I.R under Exhibit P1. A perusal of the F.I.R reveals that he has specifically contended that he had purchased the vehicle and handed over the same to his son for earning his livelihood. The learned counsel for the claimants had contended that such a statement recorded in the F.I.R cannot be taken into consideration for the purpose of deciding the claim petition under the Workmen's Compensation Act. As rightly pointed out by the learned counsel for the appellant/insurance company, the Hon'ble Supreme Court in a judgement reported in ***(2007) 13 SCC 476 (Oriental Insurance Company Limited Vs. Premlata Shukla and others)*** in Paragraph Nos. 13 and 14 has held as follows:

*“13. However, the factum of an accident could also be proved from the First Information Report. **It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon.** It was marked as an Exhibit as both the parties intended*



to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.”

11. In view of the judgment of the Hon'ble Supreme Court, it is clear that when the claimants themselves have relied upon the F.I.R and marked it as Exhibit P1, they cannot now contend that the content of the F.I.R cannot be considered. That apart, the F.I.R has been lodged not by any third party, but by the father of the deceased himself who is arrayed as the first claimant in the claim petition. When he is the owner of the car which was entrusted to his son to earn his livelihood, certainly there is no employer employee relationship between the deceased and the first respondent. Merely by filing the R.C.Book and also a policy copy of the vehicle, it cannot be contended that the deceased was working as a driver under the first respondent especially when the first respondent had addressed a communication to the insurance company under Exhibit R2 to the effect that they have already sold the vehicle. Therefore, the Workmen Compensation Commissioner was not



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right in holding that the claimants have established employer employee relationship between the deceased and the first respondent. All the substantial questions of law are answered in favour of the appellant.

12.In view of the above said deliberations, the award passed by the Workmen's Compensation Commissioner, Dindigul in E.C.No.92 of 2014 is hereby set aside and this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024.

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

1. The Commissioner for Employees Compensation
/Deputy Commissioner of Labour, Dindigul

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.229 of 2018
and CMP(MD).No.3433 of 2018

16.07.2024