



C.M.A.(MD).No.769 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.769 of 2019

and

C.M.P(MD) No.9940 of 2019

The Oriental Insurance Company Limited,
No.6-A, North Cotton Road,
Thoothukudi.

... Appellant/2nd Respondent

-vs-

1. Mariselvi

2. Minor.Sudalaimanikandan

3. Minor. Esakkiammal

4. Ayyakutti Asari

5. Lakshmi

... Respondents 1 to 5/
Petitioners 1 to 5

6. Thangamani

... 6th Respondent/
1st Respondent

7. T.Sumathi

... 7th Respondent/
3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order passed in W.C.No.21 of 2015, dated 22.07.2019, on the file of the Deputy Commissioner for Workmen Compensation, Tirunelveli.



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For Appellant : Mr.C.Jawahar Ravindran
For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award passed in W.C.No.21 of 2015, dated 22.07.2019, on the file of the Deputy Commissioner for Workmen Compensation, Tirunelveli.

2. According to the claimants, the deceased person was repairing a Tipper Lorry owned by the first respondent and insured with the second respondent. While repairing the lorry, the deceased had lifted the Tipper Lorry using a big log and he had went underneath the lorry to undertake the repair work. At that time, the log had slipped and the tipper lorry had fallen on the neck of the deceased person and he succumbed to the injuries.

3. The Insurance Company has filed a counter contending that there is no employer – employee relationship between the deceased and the first respondent. In fact, the deceased was having his own workshop and he was providing service to the first respondent. Hence, they have contended that when the employer-employee relationship has not been established, the



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question of invoking jurisdiction under the Workmen Compensation Act, does not arise.

4. The Tribunal had relied upon Ex.R1- Policy and arrived at a finding that when the repair work is undertaken on the basis of charges, he should be construed to be an employee of the first respondent. Based upon the above said finding, the Commissioner for Workmen Compensation has proceeded to award a sum of Rs.7,05,875/- along with interest. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant, in the claim petition it is admitted that the vehicle was stationed in the workshop belonging to the deceased and the accident has taken place only in the said place. Further, the repair work is undertaken only on payment of charges. Therefore, the deceased was not receiving any salary from the first respondent and there is no employer-employee relationship. He further contended that, merely because the policy provides for payment of compensation to the driver or the cleaner, the deceased person cannot be brought under the said coverage because he is neither the driver nor the cleaner. Hence, he prayed for allowing the appeal as against the Insurance Company.



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6. Though claimants have been served, they have not chosen to appear either in person or through their counsel. The learned counsel, who have filed vakalat on behalf of the owner of the tipper lorry had already withdrawn.

7. In view of the above said facts, this Court proceeds to pass orders based upon the submission of the learned counsel appearing for the appellant/ Insurance Company.

8. As per the pleadings in the claim petition, the deceased person was undertaking repair work of the tipper lorry belonging to the first respondent. At the time of the said repair, the lorry had fallen down on the deceased person and he had passed away. The wife of the deceased has been examined as P.W.1, who in her cross examination has admitted that her husband is the owner of the workshop and two other persons are employed under him for salary. Therefore, it is clear that the vehicle belonging to the first respondent was brought to the workshop owned by the deceased person and the repair work was undertaken at that place. In such circumstances, the relationship between the first respondent and the deceased person can never be considered to be employer – employee relationship. The deceased at the most could be



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considered to be a service provider to the first respondent. Therefore, in such circumstances, the Commissioner for Workmen Compensation was not right in holding that there is an employer-employee relationship, especially, when there is no proof that the deceased person was receiving any weekly or monthly salary from the deceased person.

9. In view of the above said deliberations, the substantial question of law raised relating to employer-employee relationship is answered in favour of the appellant. Accordingly, this Civil Miscellaneous Appeal stands allowed. However, this will not stand in the way of the claimants to approach the Motor Accident Claims Tribunal, for receiving any compensation, if they are so advised. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

20.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Deputy Commissioner for Workmen Compensation,
Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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