BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.473 of 2021

The Branch Manager,
HDFC ERGo General Insurance Company Ltd.,
No.G3, Asutha Apartments,
No.111, Bharathidasan Road,
Contonment, Trichy (PAOA). ... Appellant

Vs.

1.Lalitha,
2.Minor Mathankumar,
3.Minor Sumithra,
4.Dhayalan. ... Respondents

Prayer: Civil Miscellaneous Appeals filed Section 30 of Workmen Compensation Act, against the award dated 09.07.2019 passed in E.C.No. 40 of 2016, on the file of the Commissioner of Employees' Compensation (Deputy Commissioner of Labour), Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents
for R1 to R3: Mr.D.Boopal
for R4 : No appearance

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JUDGMENT

The Insurance Company has preferred the instant appeal challenging the finding on liability.

2. The respondents 1 to 3 filed a claim petition stating that while the deceased was working as a tractor driver under the fourth respondent herein and while he was driving the tractor, the sugarcane, which was loaded on the trailer, fell on the tractor and hence, the deceased sustained fatal injuries.

3. The fourth respondent remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that the deceased did not have a valid licence and therefore, they are not liable to pay any compensation.

5. Before the Commissioner, the respondents 1 to 3/claimants examined P.W.1 and marked Exs.P1 to P9. The appellant examined R.W.1

and marked the policy document as Ex.R1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, though found that the deceased did not have a valid licence, directed the appellant to pay the compensation as the employee-employer relationship was established.

7. The learned counsel for the appellant submitted that in view of the decision of the Hon'ble Supreme Court in the case of ***Beli Ram vs. Rajinder Kumar and another*** reported in ***2020 (2) TN MAC 445 (SC)***, the appellant should have been totally exonerated from the payment of compensation and submitted that there cannot even be a direction to pay and recover the compensation.

8. The learned counsel for the respondents 1 to 3/claimants, per contra, submitted that though the deceased did not have a valid licence, the appellant can be directed to pay the compensation and recover it from the fourth respondent herein by relying upon the observations made in ***Beli Ram***'s case (cited supra), as the object of the Workmen Compensation Act, is to provide immediate succor to the claimants.

9. Though notice to the fourth respondent has been served, none has entered appearance.

10. This Court, at the time of admission on 01.06.2021, framed the following substantial questions of law:

> *‘(a)Whether the Tribunal was right in directing the appellant Insurance Company to pay the compensation amount, after giving a categorical finding that the vehicle was driven by a person, who did not have a valid driving licence and which is a statutory violation under the Motor Vehicles Act, 1988?*
>
> *(b) Whether the Commissioner under the Workmen Compensation Act can direct the appellant Insurance Company to pay the entire compensation amount, in the light of the applicability of only Section 143 of the Motor Vehicles Act, 1988 to the proceedings under the Workmen Compensation Act and the provisions of Chapter XI not being made applicable to those proceedings?*
>
> *(c) Whether the Tribunal was right in directing the appellant Insurance Company to*

pay the entire compensation amount in the proceedings under the Workmen Compensation Act, where it has been held contrary by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Mastan and another*** *reported in* ***SC 2006 ACJ 528****?'*

11. The fact that the deceased was working as a driver under the fourth respondent is not in dispute. The finding of the Tribunal that the driving licence, which expired in the year 2001, was not renewed till the date of accident in the year 2014 is also not under challenge. The only question is whether in the absence of the valid driving licence, the appellant would be liable to pay compensation. This question is no longer *res integra*. The Hon'ble Supreme Court in the case of ***Beli Ram*** (cited supra), held that since the employer has not taken any steps to ensure that his driver had a valid licence, the Insurance Company could not be held liable. The Hon'ble Supreme Court held that since the owner of the vehicle had not acted responsibly by permitting the deceased to drive without a valid licence, he would be liable to pay the compensation. The Hon'ble Supreme Court in the said case had quoted the judgment of the Himachal Pradesh High Court in ***National Insurance Co. Ltd. Vs. Hem***

Raj and others reported in ***2012 ACJ 1891***, with approval wherein the Himachal Pradesh High Court held that the Insurance Company is not liable and however, permitted the claimants to withdraw the amount deposited by the Insurance Company giving liberty to the Insurance Company to recover the same from the owner. That apart, the Hon'ble Supreme Court in ***Beli Ram***'s case (cited supra) has observed in para 21 as follows:

> '21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the *sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle.'*

12. The above observation would make it clear that right of the victim has to be protected by allowing the claimants to withdraw the compensation amount giving liberty to the Insurance Company to recover it from the owner. Therefore, this Court is of the view that the finding of the Commissioner holding that the appellant is liable to pay compensation is set aside. However, the appellant has already deposited the amount, which can be permitted to be withdrawn by the claimants. Therefore, liberty is granted to the appellant to recover the compensation from the fourth respondent herein in the manner known to law. The substantial questions of law are answered accordingly.

13. The respondents 1 to 3/claimants are permitted to withdraw the award amount together with proportionate interest and costs, as per the apportionment fixed by the Commissioner, less the amount already withdrawn, if any, by filing appropriate application before the Commissioner.

14. The respondents 2 and 3 were minors when the claim petition was filed in the year 2016. They would have attained majority now. Hence, they are directed to file appropriate application for recording

themselves as majors and withdraw their share.

15. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

14.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1.The Commissioner of Employees' Compensation (Deputy Commissioner of Labour), Dindigul.

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

SUNDER MOHAN, J.

apd

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