



C.M.A. (MD) No. 748 of 2016

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Dated: 20.03.2024

CORAM:

THE HON'BLE MR. JUSTICE **P. DHANABAL**

C.M.A. (MD) No. 748 of 2016

and

C.M.P (MD) No. 7340 of 2016

The National Insurance Company Limited
78, Thiruvankatasamy Chetty Street
Erode

.. Appellant/3rd Respondent

Vs.

1. Chandra
2. Minor. Gayathri
3. Minor. Kousalya
4. Minor. Durai Ragunathan
(Minor respondents 2 to 4 are represented by their mother and natural guardian, 1st respondent/Chandra)
5. The Proprietor
Ramalingam & Co
TNSCB-Worksite
Ernavoor, Chennai- 51 .. 5th Respondent/1st Respondent
6. R.P.P. Selvam
Proprietor of Infrastructure Pvt Ltd.,
Mynnamparappu- N.G. Palayam Post,
Erode District .. 6th Respondent/2nd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30(1) of the Workmen's Compensation Act, to set aside the award dated 12.04.2016 (which was received by the appellant Insurance company on 22.04.2019) made in W.C. No. 90 of 2010 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour) Dindigul.



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For Appellant : Mr.J.S.Muruali
For R-1 to R4 : Mr.R.Shankar Ganesh
For R-2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C. No.90 of 2010 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour) Dindigul, wherein the petitioners 1 to 4 have filed petition before the Commissioner of Workmen Compensation for the death of one Murugavel.

2 For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The case of the petitioner before the Tribunal are as follows:

The deceased Murugavel was working as a driver in a lorry bearing Reg. No. TA 1 D 0689 belongs to the second respondent. Whiles, on 24.08.2009 when the deceased Murugavel was driving the vehicle in the work site of the first respondent at Chennai he



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died . The first respondent was engaged in construction work and the second respondent is the owner of the vehicle. For the past three years the deceased was working under the second respondent and he was earning a sum of Rs.6000/- per month and the deceased died while he was driving the vehicle and thereby the death was caused in the course of employment. Therefore the petitioners being legal heirs of the deceased have filed this petition.

4. The brief averments of the counter filed by the second respondent are as follows:

The petition is not maintainable and it is admitted that the deceased was working as driver under the second respondent and he died on 24.08.2009 when he was on duty. The monthly income and other averments made in the petition are strictly to be proved by the petitioners. The second respondent vehicle was insured with the third respondent and the policy was in force, thereby the second respondent is liable to pay compensation to the petitioners.

5. The brief averments of the counter filed by the third respondent are as follows:

The petition is not maintainable either in law or on facts and the petition is liable to be dismissed. The petitioners are put to strict



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proof of the averments made in the petition. The respondent denied the age, occupation and income of the deceased. The deceased was not died in relation to the employment and he died due to heart disease and thereby the third respondent is not liable to pay any compensation to the petitioners.

6. Before the Tribunal, on the side of the petitioner the first petitioner was examined as P.W.1 and marked exhibits P.1 to P.9 and on the side of the respondents R.W.1 was examined and no documents were marked.

7. After analyzing the evidence adduced by both parties, the Deputy Commissioner of Labour Dindigul had allowed the petition and awarded a sum of Rs. 3,76,300/- towards compensation to the petitioners. As against the order passed by the Commissioner of Labour, the third respondent/ Insurance Company has preferred this appeal

8. The learned counsel appearing for the appellant would contend that the deceased died while he was working under the second respondent. However the deceased died due to heart disease and the death is not in relation to the employment and the



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petitioners failed to examine the doctor to prove the cause of death, thereby they failed to prove their case. However the Tribunal without considering the same awarded compensation by directing the third respondent to pay the said amount. To support his contention he relied on the judgment in the case of ***Shakuntala Chandrakant Shreshth .vs. Prabhakar Maruti Garvali and another*** reported in ***(2007)11 SCC 668***.

9. The learned counsel appearing for the respondents 1 to 4 would contend that the deceased was working under the sixth respondent/second respondent as driver and the said vehicle was insured with the appellant/third respondent. The deceased died while he was in the course of employment and the post mortem report was marked as Ex.P.5. As per Ex.P.5 the deceased died due to Coronary Arterial Heart disease. The deceased is having no other ailment prior to his death. He died only due to his work load and the post mortem certificate clearly indicates the cause of death and thereby the Tribunal also after taking into consideration and also after relying judgment in the case of ***National Insurance Co.vs.Kasthuriba*** reported in ***(2007)ACJ 2796*** has held that the deceased died due to stress while he was driving the vehicle. Therefore the order passed by the Tribunal is in order and the



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present appeal deserves to be dismissed. Further relied the judgment in the case of ***C.Manjamma and another vs the Divisional Manager, The New India Assurance Co Ltd in Civil Appeal No.2568 of 2022,***

10. Heard both sides. At the time of admitting the appeal this Court framed the following substantial questions of law

i) Whether the Commissioner was correct in awarding compensation to the claimant when the death caused to the deceased had not arisen out of and in the course of employment with the sixth respondent/owner of the vehicle?

ii) Whether the Commissioner has erred in awarding compensation to the claimants when the claimants have not chosen to examine the Doctor who issued the post mortem certificate Ex.P.5 or any other Doctor to prove that the deceased died only because of the heart attack due to stress and strain?

Substantial question of law No.1

11. In this case there is no dispute that the deceased was working under the sixth respondent/second respondent as driver and the said vehicle was insured with the appellant/third respondent. According to the respondents 1 to 4/petitioners the deceased died while he was driving the vehicle, he sustained heart attack and



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therefore he was admitted in the hospital where he died. There is no dispute that the deceased died in the course of employment. The contention of the appellant is that deceased not died to the employment but the respondents 1 to 4 have categorically stated that the deceased died in the course of employment while he was working in the vehicle and to that effect also produced Post Mortem Certificate/Ex.P.5 and it also reveals that the deceased died due to Coronary Arterial disease. Therefore there is no evidence that the deceased suffered from any ailment prior to the death and thereby it can be presumed that the deceased died due to his employment. Further the learned counsel appearing for the petitioner relied judgment in the case of ***Shakuntala Chandrakant Shreshth .vs. Prabhakar Maruti Garvali and another*** reported in ***(2007)11 SCC 668***. On careful perusal of the above said judgment it is clear that unless the evidence is brought on record to establish that the death by way of heart attack because of stress and strain of work, the Commissioner would have no jurisdiction to grant damages.

12. The learned counsel appearing for the respondents relied judgment of the Hon'ble Apex Court in the case of ***C.Manjamma and another vs the Divisional Manager, The New India Assurance Co Ltd in Civil Appeal No.2568 of 2022***, wherein it is held as follows:



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Even in paragraph 42 of the decision in [Shakuntala Chandrakant Shreshti](#)(supra), this Court has made it clear that a question of law would arise when the same is not dependent on examination of evidence and which may not require any fresh investigation of fact. A question of law would arise, of course, when the finding is perverse or when no legal evidence is adduced to establish the jurisdictional facts. The observations made by the High Court in the present case in paragraph 21 appear to be rather of assumptive nature than of specific conclusion on perversity. In other words, the view as taken by the Commissioner was the one based on the material placed on record, which basically established that the deceased was indeed employed as a driver on the vehicle; he was 30 years of age; and he died while on duty and his demise due to cardiac arrest was attributable to his job of driver. There had not been shown any other background aspect or any other clinching feature because of which death of the workman, a 30-year-old person, could be attributed to any other cause. That being the position, the view taken by the Commissioner had been a possible view of the matter in the given set of facts and circumstances; and there was no reason for the High Court to interfere with the same, particularly when the case did not involve any substantial question of law within the meaning of [Section 30](#) of Employees Compensation Act, 1933.

13. On careful perusal of the above said judgment it is clear that when the deceased died while on duty and his demise is due to cardiac arrest was attributable to his job of driver there has not been shown any other background aspect or any other clinching feature because of which death of workmen could be attributed to



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any other cause. In the case on hand also there is evidence that the deceased had other ailments before his death thereby the said case law squarely applicable to this case. In this context the Tribunal also relied judgment in the case of ***Oriental Insurance Company Ltd, Trichur .vs. Kabutari Devi and others*** reported in **2007 ACT 2796** has held that though there is no direct evidence that the deceased suffered from stroke only due to stress and strain , it can safely be held that the deceased must have suffered from severe stress due to driving long distance specifically in the night. Therefore from the above said judgments and the judgment referred by the Tribunal and as discussed supra this Court can safely held that the death was cause to the deceased arising out of and in the course of the employment of the sixth respondent/owner of the vehicle. Therefore the order passed by the Tribunal is in order. Thus the substantial question of law is answered.

Second substantial question of law

14. According to the appellant the petitioners have not examined any doctor to prove the cause of death. However on the side of the petitioners they have produced Ex.P.5/Post Mortem Certificate and it clearly shows that the deceased died due to Coronary Arterial Heart disease. Ex.P.5 clearly indicates the cause of death and after the death of the deceased it is not possible to prove



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that the deceased died only because of stress and strain. After the death of the deceased it is not possible to find out the nature of the disease and thereby non examination of the post mortem doctor to prove Ex.P.5/ Post Mortem Certificate is not fatal to the case, thereby there is no error in awarding in compensation to the claimants in the absence of examination of doctor, thus the substantial question of law is answered.

15. Therefore in view of the answers made to the substantial questions of law, the present appeal has no merits and deserves to be dismissed.

16. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

20.03.2024

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

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1. The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour) Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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