



C.M.A.(MD).No.384 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.384 of 2018

and

C.M.P(MD) No.4858 of 2018

The Divisional Manager,
The United India Insurance Company Limited,
Divisional Office No.IV,
No.52, South Masi Street,
Madurai – 1

... Appellant/2nd Respondent

-vs-

1. Gowri

2. B.Nagananthini

3. B.Nareshkumar

... Respondents 1 to 3/
Petitioners 1 to 3

4. M/s.Sharp Security Services,
Represented by its owner,
Mr.M.Natarajan,
No.18A, Vivek Street,
Duraismy Nagar,
Madurai – 10.

... 4th Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order passed in W.C.No.115 of 2011, dated 18.09.2017 on the file of the Commissioner for Employees Compensation, Madurai.



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For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.S.Ramasamy

For R-4 : 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.115 of 2011, on the file of the Commissioner for Employees Compensation, Madurai, primarily, on the ground of liability.

2. According to the claimants, the deceased was working as a Security Guard in A.T.M. Centre and he was drawing a salary at Rs.4,500/- from the first opposite party in the claim petition. The deceased had passed away due to heart attack at about 06.00 a.m, on 17.05.2011, while he was working as a Security Guard.

3. The Insurance Company, namely, the second opposite party had filed a counter questioning the quantum of wages and also contending that the death has not occurred during the course of employment or arising out of employment.



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4. The Commissioner for Employees Compensation, after considering the oral and documentary evidence, has arrived at a finding that the death has occurred only during the course of employment and awarded a sum of Rs.3,27,956/- (Rupees Three Lakhs Twenty Seven Thousand Nine Hundred and Fifty Six only). Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the Insurance Company, the death has not occurred due to the stress and strain arising out of the employment and it is a case of heart attack and therefore, the said death cannot be covered under the Workmen Compensation Policy. He further contended that in the policy, the payment of premium has been made for 120 Security Guards treating the monthly salary at Rs.2,083/-. Therefore, the liability is restricted only for the amount of Rs.1,71,432/-. The Commissioner for Employees Compensation was not right in directing the Insurance Company to satisfy the award in entirety and thereafter, recover the excess amount from the employer. The Employees Compensation Act does not contemplate pay and recovery in employer and employee relationship. He further contended that the contractual terms have to be strictly adhered to and they are liable to the extent of the premium and coverage as per the policy



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conditions.

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6. Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants had contended that the deceased was working as a Security Guard in A.T.M Centre and during the night hours working a Security Guard, due to a stress and strain, he had passed away in the early morning hours. Hence his death is only attributable to the stress and strain arising out of the working conditions. He further contended that it is very difficult to recover the amount from the first respondent in the claim petition. Therefore, the Commissioner was right in ordering pay and recovery. Hence, he prayed for sustaining the order passed by the Commissioner for Employees Compensation.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The deceased was aged about 48 years old and he was a Security Guard in A.T.M Centre. It is not in dispute that he was working as a Security Guard at the time of his death which happened at about 06.00 a.m, on 17.05.2011. Throughout the night hours he was working as a Security Guard. Therefore, due to stress and strain, he had heart attack and he had passed



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away. Therefore, the contention of the learned counsel appearing for the appellant that the death has not happened during the course of employment is not legally sustainable.

9. The learned counsel appearing for the appellant has relied upon the Ex.R3- Insurance Policy to contend that a policy has been taken, considering the fact that the salary is being paid at the rate of Rs.2,083/- to each one of the employees. Therefore, the liability is restricted to the extent of the salary received by the deceased person. In case, if the Commissioner arrives at a finding that he is entitled to more compensation, the balance amount has to be recovered only from the employer and not from the Insurance Company.

10. In paragraph No.18 of the award, the Commissioner has specifically pointed out that the Insurance Company is liable to pay a sum of Rs.1,71,432/- and further directed the Insurance Company to pay the entire award amount of Rs.3,27,956/- and thereafter, recover the excess amount from the employer, which is not sustainable in law. Under Section 12 of the Employees Compensation Act, 1923, pay and recovery principle is available only between the principal employer and the contractor.



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11. In view of the above said facts, the award of the Commissioner for Employees Compensation is set aside and modified as follows:

(i) The total compensation fixed by the Commissioner for Employees Compensation at Rs.3,27,956/- (Rupees Three Lakhs Twenty Seven Thousand Nine Hundred and Fifty Six only) is hereby confirmed;

(ii) The appellant/Insurance Company is mulcted with the liability of Rs.1,71,432/-(Rupees One Lakh Seventy One Thousand Four Hundred and Thirty Two only); and

(iii) The balance award amount can be recovered by the claimants from the first respondent in the claim petition, namely, Proprietor of Sharp Security Services.

12. With the above said observation, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.06.2024

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

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



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R.VIJAYAKUMAR,J.

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