



C.M.A.(MD).No.1261 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.08.2024

DELIVERED ON : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.1261 of 2023
and C.M.P.(MD).No.16729 of 2023

The Manager,
M/s.The New India Assurance Company Ltd.,
Circle Office,
BSNL Telephone Exchange Building,
CMTS Bhavan,
Ellis Nagar,
Madurai – 625 016.

... Appellant/Respondent No.3

Vs.

Selvaraj (Died)

1.Panjavarnam

2.Abhishana

3.Manoj Kumar

4.Minor Prabhakaran

(R4 Minor represented by the first respondent who is the mother and guardian)

5.Eswari

... Respondents No.1 to 5/Petitioners

6.Malarkodi

... Respondent No.6/Respondent No.1

7.V.Mariappan

... Respondent No.7/Respondent No.2



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PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order dated 24.05.2023 passed in E.C.No.31 of 2019 before the Commissioner of Employees Compensation, Madurai.

For Appellant : Mrs.P.Malini

For Respondents : Mr.S.M.Kadhar for R1 to R5
Mr.A.Arumuga Pandian for R7
R6 – Notice dispensed with.

JUDGMENT

This appeal has been directed against the order dated 24.05.2023 passed in E.C.No.31 of 2019 before the Commissioner of Employees Compensation, Madurai.

2.The facts in brief:

On 19.10.2017 at about 6.30 p.m. the deceased was coming back to his home in a vehicle namely auto bearing registration No.TN 63 AH 2439 on the Sivagangai to Manamadurai Road. When he was nearing the place of occurrence, there was a sudden crossing by a cattle, the deceased applied break and in that process the auto lost the control and capsized. As a result of which, the deceased sustained grievous injuries.



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He was taken to the Sivagangai Government College Medical Hospital and take treatment for 60 days as in-patient and discharged on 18.12.2017. Continuing treatment again he was admitted in the hospital on 17.07.2019, underwent surgery. Later continued treatment in a private hospital. But, due to the accidental injuries, he died on 12.12.2022. A case in Crime No.879 of 2017 was registered on the file of the Sivagangai Police Station. During his life time, the deceased filed claim application claiming compensation. Pending the above said proceedings, he died. So the legal heirs were brought on record as claimants.

3.The claimants says that the first respondent is the owner of the vehicle under the control of the second respondent. At the time of occurrence the deceased was working as an employee under second respondent, getting salary of Rs.12,000/- p.m. They claimed Rs.20,00,000/- as compensation.

4.The first respondent in the main petition filed a counter stating that he sold the vehicle bearing registration No.TN 63 AH 2439, even before the occurrence to the second respondent in the main petition. The



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vehicle was handed over to him. So he is unnecessary party in the claim affirmed. The second respondent filed a counter stating that he purchased the property namely the vehicle from the first respondent and vehicle was insured with the third respondent.

5.The third respondent filed a counter stating that there was no employer and employee relationship between the deceased and the second respondent and other customary denials were made. Additional counter was filed by the third respondent namely the Insurance Company stating that the deceased did not die due the accidental injuries.

6.The Commissioner of Labour recorded a finding with regard to the first aspect of employer and employee relationship between the deceased and the second respondent that it was established.

7.Regarding the compensation amount, the age of the deceased was fixed at 41. The prescribed minimum wages was taken as Rs.8,000/-. The relevant factor was taken as 181.37 and finally awarded Rs.7,25,048/- as total compensation amount. Regarding the liability of



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coverage, it was decided that on the date of occurrence the policy was under force, even though it was taken in the previous owner's name. So against which, this appeal is preferred by the Insurance Company.

8.The learned counsel for the appellant would submit that the contention of the FIR is against the claim application. As per the FIR, it is stated that the deceased was driving his own vehicle. There is no evidence on record to show that the deceased was employee under the second respondent in the main petition. The second FIR was filed, which against the first FIR. Apart from that it is also submitted that cause of action does not survive to the claimants, since the death did not occur due to the accidental injuries.

9.Per contra the learned counsel for the respondent submitted that the relationship between the deceased and the second respondent in the main petition was established and the death occurred due to the accidental injuries. Coverage was not under the issue.

10.Now with regard to the first aspect of the relationship between



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the employer and employee, the Commissioner of Labour recorded a finding that it is stand established, since the second respondent in the main petition appeared and not specifically disputed the fact that the deceased was employee under them. Now as mentioned above, the learned counsel for the appellant would go to the contents of the FIR in Crime No.879 of 2017, wherein, the deceased has stated that he was driving the vehicle which belongs to him bearing Registration No.TN 63 AH 2439 on the Sivagangai to Manamadurai road and when he nearing the place of occurrence a cattle crossed and to avoid the hit, he applied the break in that process, it capsized and he sustained injuries. So, no doubt that the deceased has stated like that in the complaint. But, the records produced before the Commissioner of Labour, it stand established that the vehicle belongs to the first respondent originally. Later transferred to the second respondent namely Maiappan, even before the accident. The vehicle number in the policy is noted as TN 63 AH 2439. The policy was taken by the original owner namely Malarkodi, who is the first respondent in the main petition from 11.07.2017 to 10.07.2018. The date of occurrence is 19.10.2017. So on the date of occurrence the policy was in force. But, of course in the name of the



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original owner. Now the original owner was also impleaded as stated above. Now after transfer, second respondent namely Mariappan has not denied the fact that the deceased was under his employment. But, they have not chosen to examine by themselves as witness. It cannot be contended by the appellant that it is a collusive proceedings by the claimants and the second respondent in the main petition. But, there is no specific denial. It is established that the vehicle belongs to the second respondent in the main petition on the date of occurrence. The statement made by the deceased in the FIR is not correct. So that need not be given any importance. So we can take that the vehicle belongs to the second respondent and the insurance was also in force and the deceased was under the employment of the second respondent on the date of occurrence. So finding recorded by the commissioner on that aspect requires no interference.

11.The next aspect of FIR lodged by wife of the claimant with regard to the cause of death, it is stated by her that the deceased Selvaraj was living with his mother for about 7 years. He was auto driver by profession. He sustained injuries in his left leg 5 years prior to the death.



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On 11.12.2022, he returned to the house and parked the auto. But on the next day, namely on 12.12.2022 at about 06.00 a.m., he was found dead by the deceased's brother namely Aayanar. By pointing out this, the learned counsel for the appellant would submit that the cause of the death was not due to the accidental injuries.

12.Now, we will go to the finding recorded by the Commissioner. Perusal of the order does not indicate any discussion over the cause of death. It simply observed that the deceased sustained injuries during and in the course of employment with the second respondent. As indicated above, no discussion was made with regard to the specific admission made by the second respondent namely second claimant Panchavarnam. With regard to the admission in the first information report in Crime No. 474 of 2022, PW2, the wife of the deceased was cross examined and she has admitted that the FIR was registered, but would deny the complaint lodged by her. But, reading of the FIR in Crime No.474 of 2022 as indicated above shows that PW2 is the complainant or informer as the case may be. But, she wantonly denies the lodging of FIR. So this itself is sufficient to conclude that the death did not occurred due to the



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accidental injuries. No Medical Officer, who treated the deceased was examined. The body was not subjected to postmortem. Moreover, it is seen that after five years of the accident the death occurred. As seen from the Medical Records, he suffered injuries on the leg portion. So in the absence of any direct evidence on the cause of death, the conclusion reached by the Commissioner that it must be taken as a death caused in the course of employment is not correct and it is interfered.

13.Now the another aspect projected by the appellant is that when the deceased was examined as witness during his life time, he admitted in his evidence that he was plying the auto on daily hire basis. But as indicated above, the second respondent has not made any thing like that manner. But on the next line, he has denied the suggestion that he was not in employment under the second respondent. So in the light of the above said contrary statement made by him before the Commissioner, if we look into the admission made by the second respondent himself, then the relationship cannot be doubted.

14.Now coming to the compensation as discussed above, it is not



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established on the side of the claimant that the death occurred due to the accidental injuries. Now we will go to the original claim application filed by him, during his life time with regard to the disability. He was referred to the Medical Board attached to the Government Medical College Hospital, Sivagangai. He was assessed with 55% of permanent disability, which means, partial permanent disability. It does not indicate the functional disability, since as stated by the wife that even after the occurrence, he continued to drive the auto. So far the accidental injuries of disability, the deceased is entitled for compensation. Even though death occurred during the pendency of the case, the compensation has become due on the date of occurrence itself, which is the deeming provision made available to the employees.

15. Section 4A of the Employees Compensation Act reads as under.

“4A. Compensation to be paid when due and penalty for default.--(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he



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accepts, and, such payment shall be deposited with the Commissioner or made to the 1[employee], as the case may be, without prejudice to the right of the 1[employee] to make any further claim.

3[(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”



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16. So the amount of compensation will become the estate of the deceased, which must be quantified on the date of accident itself. Now in the absence of any evidence to show the correct and exact salary, since the date of accident is in the year 2017, the minimum prescribed wages is Rs.8,000/- as observed by the Commissioner of Labour as per Section 4B. The total compensation awardable under the disability is 60% of the monthly wages of the injured multiplier by relevant factor. $\text{Rs.8,000} \times 181.37 \times 60/100 = \text{Rs.8,70,576/-}$. Accordingly, the award is enhanced.

17. Accordingly, this appeal stands dismissed and the award is enhanced.

(I) The quantum of compensation awarded by the Tribunal is enhanced to Rs.8,70,576 /- (Eight Lakhs Seventy Thousand and Five Hundred and Seventy Six only), which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of Rs.8,70,576 /- (Eight Lakhs Seventy Thousand and Five Hundred and Seventy Six only) (if not already deposited) together with



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interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants except the minor are permitted to withdraw their respective shares after following the due process of law, less any amount already received by them. In respect of the minor claimant, the entire share shall be deposited in a Nationalized Bank and the 1st claimant / mother of the minor is permitted to withdraw the interest once in three months.

(iv) Consequently, connected miscellaneous petition stands closed.

29.08.2024

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

1.The Commissioner of Labour for Workmen Compensation, Madurai.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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