



C.M.A.(MD).No.1091 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1091 of 2018

and

C.M.P(MD) No.11148 of 2018

MAGMA HDI
General Insurance Company Limited,
Magma House,
2nd Floor, Ark Chambers,
24, Park Street,
Kolkatta – 700 016,
West Bengal.

... Appellant/ 2nd Respondent

-VS-

1. Sheelammal

2. Sabariar

... Respondents 1 and 2/Petitioners

3. B.Siddique

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Employee's Compensation Act, 1923, challenging the order dated 05.02.2018 made in W.C.No.7 of 2016, on the file of the Commissioner for Employee's Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.T.Selvakumar – for R1 and R2
: No appearance- for R3



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in W.C.No.7 of 2016, on the file of the Commissioner for Employee's Compensation (Deputy Commissioner of Labour), Tirunelveli, primarily on the ground of liability.

2. According to the claim petition, the deceased was working as a driver with the first respondent. On 29.09.2015, at about 04.45 p.m., when he was driving the Car on Nanguneri to Valliyoor four lane, the Car got capsized. The driver Jose sustained grievous injuries and died on the spot. According to the claimants, the deceased was 20 years old and he was earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month.

3. The owner of the vehicle, namely, the first respondent had remained *exparte*. The Insurance Company has filed a counter contending that the deceased was not employed with the first respondent and the accident has taken place only due to the overloading of the vehicle.



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4. The Commissioner for Employee's Compensation, after considering the oral and documentary evidence, has arrived at a finding that the deceased was working as a driver with the first respondent and the accident had taken place while in the course of the employment. The Commissioner, has fixed the monthly salary at Rs.4,000/- (Rupees Four Thousand only) per month and proceeded to fix the compensation at Rs.8,96,000/- and added a sum of Rs.5,000/- towards funeral expenses. In total, a sum of Rs.9,01,000/- (Rupees Nine Lakhs and One Thousand only) was awarded by the Commissioner. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. The following questions of law have been raised in the appeal:

“1. Whether any person who was driving the vehicle at the time of accident can be termed as “employee” and whether such a persons can be said to be in employer-employee relationship with the insured irrespective of the fact there was no admission by the insured regarding the employment as 'driver'?.

ii. Whether the liability to pay interest under the Employee's Compensation Act, 1923 arises after 30 days from the date of the accident or from the date of the accident itself?



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iii. Whether the Insurance Company is liable to pay the default interest at the rate of 12% under the Employees Compensation Act, 1923, when the same is not covered by the Insurance Policy?

iv. Whether the Insurance Company can be mulcted with the liability to pay compensation when there is breach of policy condition?

v. Whether the Insurance Company can avail the defences available under Section 149 of Motor Vehicles Act in a proceeding under Workmen Compensation Act, 1923, in as much as the Insurance Policy is issued under the Motor Vehicles Act?"

6. According to the learned counsel appearing for the appellant, the claimants were not able to establish the fact that the deceased was employed with the first respondent and no oral and documentary evidence has been placed on record to establish the said fact. When the employer-employee relationship has not been proved, the question of payment of compensation by the Insurance Company by way of indemnification does not arise.

7. Per contra, the learned counsel appearing for the respondents 1 and 2/claimants had contended that immediately after the accident an FIR was registered and there is a reference about the name of the driver, who had



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passed away in the said accident. He further contended that the Insurance Company has not let in any evidence, refuting the allegations in the F.I.R. Hence, he prayed for sustaining the award passed by the Commissioner for Employee's Compensation.

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

9. As it could be seen from the claim petition, the deceased was working as a driver with the first respondent which is disputed by the appellant/Insurance Company. A perusal of Ex.P.1 – F.I.R reveals that the deceased's name is found place as a driver at the time of the accident. No contra evidence has been let on the side of the Insurance Company to disprove the same. In such circumstances, this Court is of the considered opinion that the deceased was working as a driver under the first respondent and the accident has taken place in the course of employment.

10. The Tribunal has taken into consideration, a sum of Rs.4,000/- per month as income based upon the Government Order and proceeded to fix the compensation at Rs.9,01,000/- (Rupees Nine Lakhs and One Thousand only).



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Therefore, this Court does not find any reason to interfere in the quantum of award. When the claimants have established the employer – employee relationship and the fact that the accident that has taken place in the course of employment, the owner of the vehicle is to be indemnified by the Insurance Company. However, it is made clear that the indemnification by the Insurance Company will be restricted to the principal amount awarded by the Commissioner for Employee's Compensation to an extent of Rs.9,01,000/- (Rupees Nine Lakhs and One Thousand only). As far as the interest is concerned, the same has to be recovered from the first respondent, namely, the owner of the vehicle.

11. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

29.07.2024

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

1. The Commissioner For Employee's Compensation
(Deputy Commissioner of Labour),
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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