BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.07.2024

PRONOUNCED ON : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.280 of 2017

1.S.Rasammal

2.Minor S.Manjula

3.Minor S.Arunkumar .....Appellants/Claimants

(Minor appellants 2 & 3 represented through their mother and natural guardian S.Rasammal, the 1st appellant)

Vs.

1.K.Ganesan

2.C.Venkatachalam

3.The Divisional Manager
United Indian Insurance Company Ltd.,
Divisional Office No.1
TVS Building
7A, North Veli Street
Madurai -1 ....Respondents 1 to 3
/Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 30(i)(a) of Workmen's Compensation Act, 1923, to set aside the order dated 30.08.2010 passed in W.C.No.246 of 2006 on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai and fixed the liability against the 3rd respondent.

For Appellant	: Mr.M.Sarangan
For R1	: No appearance
R2	: Died
For R3	: Mr.Shajahan

JUDGMENT

The instant appeal has been filed by the claimants in W.C.No.246 of 2006 on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai challenging the exoneration of the insurance company.

2.According to the claimants, the deceased was working as a driver under the first respondent. When the deceased was proceeding on the road, due to engine trouble, the vehicle had stopped. The victim was trying to setright the problem by working under the engine. Unexpectedly, the vehicle moved and ran over the deceased. He had sustained injuries and later passed away. The claimants have prayed for a compensation of Rs.6,00,000/-.

3.The first respondent in the claim petition who is the present owner of the vehicle and the second respondent who was the previous owner of the vehicle have remained exparte before the Commissioner.

4.The Insurance Company had filed a counter contending that though the policy was subsisting on the date of the accident, the certificate of the insurance was not transferred in the name of the first respondent. Therefore, there is no employer employee relationship between the victim and the first respondent. The policy was standing in the name of the second respondent. Hence, they are not liable to pay compensation. They have further contended that when a vehicle had broken down, the driver is not expected to go under the Car to repair the same and he should have been called for an expert. Hence, the accident has taken place due to the negligence on the part of the driver.

5.The Workmen's Compensation Commissioner after considering the oral and documentary evidence, had arrived at a finding that the deceased was employed with the first respondent and the accident has taken place in the course of employment, but has proceeded to exonerate the insurance company relying upon a judgment of our High Court reported in ***(2009) 2 MLJ 469 (United India Insurance Company Ltd., Madurai Vs. M.Periyasamy and another)*** wherein this Court has held that the deeming provision under Section 157(1) of the Motor Vehicles Act would be applicable only to the third parties and not with regard to the employees of the transferee of the vehicle. Challenging the said order, the present appeal has been filed by the claimants.

6.The learned counsel appearing for the appellants had relied upon a Three Judges Bench of the Hon'ble Supreme Court reported in ***2014(2) TN MAC 729 (SC) (Mallamma (dead) by L.Rs Vs. National Insurance Co.Ltd., and others)*** and contended that in a similar case, the Hon'ble Supreme Court was pleased to hold that the deeming provision under Section 157(1) of M.V.Act would be applicable even in cases falling under Workmen's Compensation Act. Hence, he prayed for allowing the appeal.

7.Per contra, the learned counsel appearing for the insurance company had vehemently contended that in the present case, the employer employee relationship between the deceased and the first respondent has not been established and therefore, the facts of the said judgment are not applicable to the present case. He had further contended that when the transferee has not approached the insurance company within a period of 14 days from the transfer of vehicle, the benefit under Section 157(1) of M.V.Act cannot be obtained by the transferee. Hence, he prayed for sustaining the award passed by the Workmen Compensation Commissioner.

8.I have considered the submissions made on either side and perused the material records.

9.According to the claimants, the deceased was employed as a driver with the first respondent. Exhibit P1 is the F.I.R. It reveals that the deceased was working under the Car for repairing the engine and suddenly, the Car had moved and the deceased was seriously injured. The vehicle number is specifically mentioned in the F.I.R. A perusal of Exhibit P3- R.C. Book of the vehicle reveals that the vehicle was transferred from the name of the second respondent to the name of the first respondent by an endorsement dated 15.12.2005. The accident has happened on 31.05.2006. Therefore, it is clear that when the accident had happened, the victim was en employee of the first respondent. There cannot be any dispute that the accident has taken place during the course of employment.

10.According to the learned counsel appearing for the Insurance Company, the deeming provision under Section 157(1) of M.V.Act is applicable only in respect of third party and it cannot be extended to the passengers of the vehicle or to the employees of the transferee unless necessary changes are effected in the certificate of insurance within a period of 14 days from the date of transfer of vehicle. He had relied upon a judgement of the learned Single Judge of this Court reported in ***(2009) 2 MLJ 469 (United India Insurance Company Ltd., Madurai Vs. M.Periyasamy and another)*** in support of his contention.

11.The Hon'ble Supreme Court while considering a similar defence of the insurance company had rejected the said defence and has proceeded to hold that the Insurance Company is liable even if the insurance policy is not transferred in the name of the transferee within a period of 14 days, in a judgment reported in ***(2014) 14 SCC 137 (Mallamma (dead) by legal representatives Vs.National Insurance Company Limited and others).*** This Court had an occasion to consider a similar case in CMA(MD).No.54 of 2019 in order dated 10.07.2024 had proceeded to hold that the time limit fixed under Section 157(2) of M.V.Act is only directory and non-compliance would not attract any penal consequences. Therefore, the contention of the insurance company that the deeming provision under Section 157(1) of M.V.Act would not applicable to the employees of the transferee of the vehicle unless the transfer is notified to the insurance company is not legally sustainable.

12.In view of the above said deliberations, the order of the Workmen Compensation Commissioner, Madurai, exonerating the insurance company is not legally sustainable. The insurance company is directed to satisfy the principal amount of the award. However, interest portion has to be satisfied by the first respondent in the claim petition namely K.Ganesan.

13.With the above said observations, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

18.07.2024

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

1.The Workmen Compensation Commissioner of Labour
/Deputy Commissioner of Labour, Madurai

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.280 of 2017

18.07.2024