

C.M.A. (MD)No.548 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 24.06.2025

Pronounced on : 29.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.548 of 2020

and

C.M.P.(MD)No.5756 of 2020

The Branch Manager,
The Oriental Insurance Company Ltd.,
Branch Office – II,
K.J.R. Complex, 1st Floor,
16, North Veli Veethi,
Madurai-625001.

... Appellant/
2nd Respondent

Vs.

1.Muthulakshmi

2.Minor Subasri

3.Minor Tharan
(Minor 2nd & 3rd Respondents rep. through
their mother/natural Guardian of the 1st
respondent Muthulakshmi)

4.Jothi

... Respondents 1-4/
Petitioners 1-4



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5.S.Selvam
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... 5th Respondent/
1st Respondent

(5th Respondent remained exparte before the lower court)

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the judgment made in Rs. 6,70,640/- (Rupees Six Lakhs Seventy Thousand Six Hundred and Forty only) passed in W.C.No.103 of 2012, dated 01.10.2020 on the file the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.A.Theethar for R1 & R4

R2, R3 minor rep. by R1

No appearance for R5

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in W.C.No.103 of 2012 dated 01.10.2020 on the file of the Commissioner for Employee's Compensation, Madurai.

2. The appellant / Insurance Company, who was mulcted with liability to pay a compensation of Rs.6,70,640/- (Rupees Six Lakhs Seventy Thousand Six Hundred and Forty only) with interest at 12% per



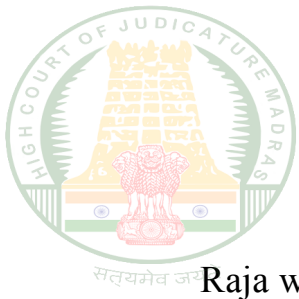
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annum to the respondents 1 to 4 / claimants, for the death of Raja, consequent to an accident occurred on 23.12.2011, challenged the liability fastened on it.

3. The case of the respondents 1 to 4 is that on 23.12.2011 at about 12.30 p.m., when the said Raja, who was under the employment with the fifth respondent, was driving a lorry bearing Registration No.TN-60-X-5976 on Palamedu main road near M/s.Sangu Sunai Blue Metal, Palamedu, he complained of severe chest pain and immediately, he was taken to Kala Hospital, Madurai and after first-aid treatment, he was taken to Saravana Hospital, Madurai, where, he was declared as surgical death due to acute chest pain (acute myocardial infarction), that the death of the said Raja had arisen in an accident during the course of his employment under the fifth respondent, that the fifth respondent has insured his vehicle with the appellant and that since the said Raja died because of acute chest pain due to stress and strain of his work, the appellant and the fifth respondent are jointly and severely liable to pay compensation.

4. It is the further case of the respondents 1 to 4 that the deceased



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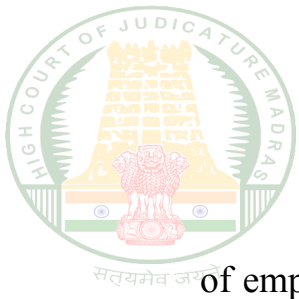
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Raja was aged 30 years at the time of accident and was earning Rs.7,000/- per month.

5. The defence of the appellant is that the incident alleged by the respondents 1 to 4 is false and no such incident had taken place, that no FIR was lodged for the alleged incident and no postmortem was conducted on the body of the deceased, that there was no accident at all and that therefore the appellant is not liable for the claim.

6. During enquiry, the first respondent examined herself as P.W.1 and two other witnesses Thiru.Deivendran and Doctor S.Jalajawahar as P.W.2 and P.W.3 respectively and exhibited 11 documents as Ex.P.1 to Ex.P.11. The fifth respondent remained exparte. The appellant adduced neither oral nor documentary evidence.

7. The learned Commissioner, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 01.10.2020 by holding that the death resulted from work related stress and strain arising out of and in the course



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of employment, directed the appellant to pay compensation. Aggrieved by the impugned order, the present appeal came to be filed.

8. The point for consideration is whether the Commissioner for Employee's Compensation erred in fastening the liability on the appellant, despite showing that the respondents 1 to 4 have not proved any employment injury arising out of and in the course of employment and that there was no connection between the employment and the death.

9. The learned counsel appearing for the appellant would submit that the learned Commissioner has failed to consider that it was not a case of accident, that there was no FIR and there was no charge sheet, that there was no postmortem, that there was no trip sheet, that the owner of the lorry-fifth respondent had remained exparte and the respondents 1 to 4 have not taken any steps to examine the fifth respondent, that the respondents 1 to 4 have not produced any evidence to show that the deceased had continuous stress and strain due to continuous work and that since the learned Commissioner has erroneously mulcted liability on the appellant, the same is liable to be set aside.



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10. The learned counsel appearing for the respondents 1 to 4 would submit that the respondents 1 to 4 have examined the lorry cleaner, who accompanied the deceased, and the medical officer who initially treated him and their evidence establishes that the deceased's death resulted from stress and strain of driving work, occurring during the course of employment. The Commissioner rightly determined a connection between the death and employment, thereby justifying the liability imposed on the appellant.

11. Before entering into further discussion, it is necessary to refer the legal position.

12. The learned counsel appearing for the respondents 1 to 4 would rely on a decision of this Court in *National Insurance Co. Ltd., Namakkal Vs. Pappathi and others* reported in **2019 (1) TN MAC 470**, wherein, a learned Judge of this Court referred the decision reported in **2008 (2) TN MAC 373 (National Insurance Co., Bhavani Vs. A.Saroja and others)** and the relevant passages are extracted hereunder:-

“16. While considering, whether a finding recorded by the Commissioner under the Workmen's Compensation



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Act, based on appreciation of evidence that an employee, died out of heart attack, arising out of and in the course of employment could be challenged in an appeal under Section 30 of the Act, in National Insurance Co., Bhavani, Vs. A.Saroja and others reported in 2009 (1) MLJ 495, this Court considered a case, wherein the claimants were wife and daughters of the deceased, who was employed as a cleaner-cum-driver in a transport Company. While proceeding to Kerala, the lorry was stopped and the employee suffered a severe heart pain and vomited. He was rushed to hospital, where he was pronounced dead. The relationship of employee and employer was disputed. It was also submitted that death due to heart attack, was due to pre existing ailment or decease and it was not out of natural cause. The Commissioner for Workmen's Compensation Act, arrived at a conclusion that the death occurred during the course of employment. Assailing the award, employer preferred an appeal, and this Court, framed the following Substantial questions of law for consideration,

"1. Has not the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem misdirected itself in law in assuming a jurisdiction which was not vested under the law in respect of the occurrence of the death which was not duly established as having taken place due to the



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employment injury and in the course of employment thereby mulcting the appellant- Insurance Company for payment of compensation?

2. Has not the Commissioner for Workmen's Compensation misdirected itself in law in entertaining the claim petition when there was nothing on record to show that the death was as a consequence of employment injury nor was it established that there was any nexus between the employment in relation to the nature of work in that the death had occurred only due to the course of travelling as a coolie and when it was also not established that the chest pain and the subsequent death due to the aftermath of strain in the work?"

17. After considering a catena of decisions and in particular, a decision of this Court in Oriental Insurance Company Vs. Nagaraj and others reported in 2008 (4) MLJ 58 : 2008 (2) CTC 407, at paragraph No.20, this Court in Bhavani's case, held as follows:

"20. Even an ordinary strain in given circumstances of the case would be enough to cause the injury or death which is found to be in the course of and out of employment, it has to be held that the claimant is entitled for the compensation. The claimant is expected in law to show that the workman suffered injury or death due to strain and stress



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drawn from the work which in particular circumstance was sufficient to cause injury or death and unlike in a criminal case it is enough to show the preponderance of probabilities which would form a premise that the claimants version is probable. It is not necessary to prove that the injury or death was caused by the stress and strain beyond any doubt but it must be shown and the materials brought before the court shall be, to the satisfaction of the Court.”

13. The learned counsel appearing for the respondents 1 to 4 would also rely on a decision of this Court in ***Oriental Insurance Co. Ltd., Tiruchirappalli Vs. S.Neelavathy and others*** reported in **2015 (2) TN MAC 772** and the relevant passage is extracted hereunder:-

“16. The contention of the learned counsel for the appellant that no FIR was lodged and no post-mortem was conducted and therefore respondents 1 to 4 are not entitled to get compensation is untenable. As held by this Court in the Judgement reported in 2013 (1) TN MAC 454 (supra), for various reasons, FIR may not be lodged or registered and investigated. Non-lodging/registering FIR will not deprive their entitlement to compensation. In the present case, respondents 1 to 4 have proved that the deceased died due to stress in view of continuous driving. The



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deceased complained of uneasiness and P.W.2, the alternate driver categorically stated that the deceased fell ill while driving the omni bus and died. The statement of respondents 1 to 4 that they did not give any complaint and did not insist on post-mortem as fifth respondent assured them that he would get them compensation and requested them not to give any complaint to the Police is acceptable in the circumstances and position they were placed as legal heirs of deceased driver. Failure to lodge FIR and not insisting on post-mortem are not fatal to the claim of the respondents 1 to 4 in this case. Therefore, there is no infirmity in the finding of Commissioner that deceased died during and in the course of his employment.”

14. It is necessary to refer the decision of the Hon'ble Supreme Court in ***Param Pal Singh through father Vs. National Insurance Co. Ltd. and another*** reported in ***2013 (1) TN MAC 1 (SC)*** relied on by the learned counsel appearing for the respondents 1 to 4, wherein also, a driver died due to heart failure while driving the vehicle and the Hon'ble Supreme Court has considered such untoward mishap as an accident as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's



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trade or business and the relevant passage is extracted hereunder:-

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“27. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an ‘untoward mishap’ can therefore be reasonably described as an ‘accident’ as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer’s trade or business.”

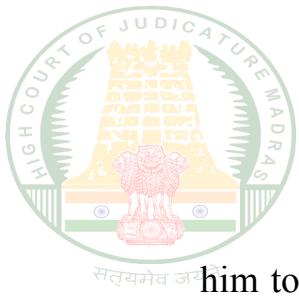


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15. The above decisions are squarely applicable to the case on hand.

16. In the present case, P.W.2-cleaner of the lorry, who accompanied the deceased, would say that while they were proceeding in the lorry bearing Registration No.TN-60-X-5976, at about 12.30 p.m. on 23.12.2011 in Palamedu main road near M/s.Sangu Sunai Blue Metal, the deceased Raja complained of severe chest pain and was immediately taken to Kala Hospital and thereafter to Saravana Hospital, where, he was declared as dead. Though he was cross-examined by the appellant's side, nothing was elicited in their favour. The respondents 1 to 4 have also summoned and examined Doctor Jalajawahar and he would say that the deceased Raja was brought to their hospital by lorry owner Selvam and cleaner Deivendran and after examining the said Raja, who was complaining severe chest pain, he was referred to Government Hospital or multi specialty private hospital but subsequently came to know, he breathed his last on the way to Saravana Hospital and that the said Raja died of chest pain due to stress and strain of his driver work. During cross-examination of P.W.3-medical officer, it was not suggested by the appellant that he had not seen the said Raja and that he had not referred



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him to Government or Private hospital. The respondents 1 to 4 have also produced the case summary issued by the Kala Hospital and the certificate issued by Saravana Hospital, Madurai under Ex.P.8 and Ex.P.9 respectively.

17. Considering the evidence available on record, the finding of the learned Commissioner that the said Raja died out of heart failure arising out and in the course of employment cannot be found fault with. The appellant has not challenged the quantum of compensation. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

18. In the result, this Civil Miscellaneous Appeal stands dismissed and the impugned order passed in W.C.No.103 of 2012 dated 01.10.2020 on the file of the Commissioner for Employee's Compensation, Madurai is hereby confirmed. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

29.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.MURALI SHANKAR,J.

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To:

- 1.The Commissioner for Employee's Compensation,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
C.M.A.(MD)No.548 of 2020
and
C.M.P.(MD)No.5756 of 2020

Dated : 29.08.2025