

The Branch Manager, Vs. 1.Pappathi

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Court : Chennai

Decided On : Jun-17-2015

Judge : The Honourable Ms.Justice v.M.Velumani

Appellant : The Branch Manager,

Respondent : 1.Pappathi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 17.06.2015 CORAM THE HONOURABLE MS.JUSTICE V.M.VELUMANI C.M.A(Md.No.1698 of 2013 and M.P(MD)No.2 of 2013 The Branch Manager, M/s.Oriental Insurance Company Limited, No.1, Layola Building, FiRs.Floor, Salai Road, Dindigul.

Chennai.Appellant/Respondent No.2 versus 1.Pappathi ..Respondent No.1/Petitioner No.1 2.Kumaran @ Pandi ..Respondent No.2/Petitioner No.2 3.Vasanthi ..Respondent No.3/Petitioner No.3 Prayer This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 against the order made in W.C.No.171 of 2009, dated 30.4.2013 on the file of the Deputy Commissioner of Labour for workmen Compensation, Dindigul.

!For Appellant :M/s.C.Jawahar Ravindran ^For Respondents :M/s.J.Gunaseelan Muthiah 1 and 2 For Respondent-3 :No appearance :JUDGEMENT This Civil Miscellaneous Appeal has been filed against the order made in W.C.No.171 of

2009, dated 30.4.2013 on the file of the Deputy Commissioner of Labour for workmen Compensation, Dindigul.

2.The appellant is the Insurance Company and the second respondent in W.C.No.171 of 2009 on the file of the Deputy Commissioner of Labour(Commissioner for Workmen Compensation).Dindigul.

The respondents 1 and 2 herein filed the W.C.No.171 of 2009 claiming compensation compensation of Rs.10 lakhs for the death of their son Nagaraj.

3,.The facts of the case are as follows: The deceased was working as a Cleaner in the lorry bearing Registration No.TN57D9013belonging to the third respondent.

On 29.08.2009, the goods belonging to the TASMAL, Coimbatore was loaded in the lorry.

The driver Babu was driving the lorry to the godown of TASMAL at Madurai.

The deceased was a Cleaner in the said lorry.

On reaching the godown, lorry was in the queue for unloading .

To protect the materials in the lorry, the deceased was lying in the top of the lorry.

At that time, he fell down from the lorry and sustained head injury and died.

Therefore the respondents 1 and 2 filed claim petition under the Workmen Compensation Act claiming compensation against the third respondent and the appellant/Insurance Company, as their son died during and in the course of employment.

4.The third respondent did not file any counter.

5.The appellant/Insurance Company in the counter denied the statement that the deceased died due to the accident that occurred due to the employment.

According to the appellant deceased died due to his own negligence.

The accident did not occur during and in the couRs.of employment of the dceased and therefore prayed for dismissal of the claim Petition in Workmen Compensation.

6.During trial, the fiRs.respondent examined herself as P.W.1 and driver Babu was examined as P.W.2 and one Vijayasekar was examined as P.W.3 and marked 9 documents Ex.P1 to Ex.P9.The appellant did not examine any witness and did not mark any documents.

The Commissioner of Workmen Compensation considering the oral and documentary evidence found that the accident took place only during and in the couRs.of employment and the deceased died while in the couRs.of employment and awarded compensation of Rs.4,42,400/-.Against the said order, the present appeal is filed.

7.At the time of admission, the following substantial questions of law are framed for consideration: 1.Whether the learned Commissioner was erred in holding that the appellant/Insurance Company is liable to pay compensation?.

2.Whether the learned Commissioner has failed to hold that the deceased Nagarajan has not met with an accident and died during the couRs.of his employment?.

3.Whether the learned Commissioner has failed to consider that the deceased on his own negligence/wilful act/volition has invited the accident and hence the appellant is not liable to pay the compensation?.

4.Whether the learned Commissioner has failed to consider the Apex Court and Madras High Court reported judgements while passing the order?.

5.Whether the learned Commissioner failed to hold that the claimants are not entitled to claim any compensation from this appellant?.

8.The learned counsel for the appellant/Insurance Company contended that the deceased did not die during and in the couRs.of employment and in support of his contention, he placed reliance of the following judgements: 1.2007(1) TN

MAC347The General Manager, Shipping Corporation of India Limited, Jawahar Building, Chennai-1 .versus A.Maria John).25.A reading of this shows that the compensation under the terms of the agreement would not be available if an injury or death is caused by Officer's own wilful act or default or misbehaviour.

Clause 148 states that in the case of Officer found missing and presumed lost overboard and where death cannot be conclusively attributed to the officer's wilful act, default or misbehaviour, compensation shall be paid as per clause 147.

As rightly submitted by the learned counsel for the appellant herein, considering the finding that the deceased officer was responsible for inviting the incident by his own negligent and wilful conduct, the question of payment of compensation as per clause 147 does not arise.

It may be notice that the question of granting compensation even as per agreement which is marked as Ex.R2 does not arise in the case, for the simple reason that the deceased invited the accident only by his own conduct, since the deceased, who was conversant with swimming into water, had gone for a swim with the boiler suit, is not totally impugned.?

2.2010(2) TN MAC609SC)(Mamtaj Bi Babusab Nadaf and others .versus United India Insurance Company Limited and otheRs.?.7.According to the reasoning of the High Court, the vehicle was not involved in the accident and the death of the workmen by no stretc.of imagination can be said to have any proximate or direct connection with the vehicle.

The High Court also observed that the mere fact that Maize was brought to the spot where the workmen had died in the insured vehicle, would not render the Insurance Company liable in respect of the death, the cause of which was not proximate to the actual user of the vehicle.?

3.An unreported judgement of the Madras High Court, dated 6.6.2001 in the case of K.Rathinam and others .versus Appollo Enterprises and others ?.8.Admittedly, the deceased was employed only for the construction work in the additional floors of the hospital and only when he came to the ground floor to take tea, he heard the

noise from the seepage well and he went to rescue the persons who had fallen into the seepage well which was not warranted and the deceased was not at all concerned with that work.

While attending the construction work for which the deceased was employed if the accident had occurred, then, of course, it can be contended that the fiRs.respondent is liabhle.

During the tea-break, the deceased had come to the ground floor and he heard some noise and voluntarily attended to the rescue work in the seepage well and the accident which occurred at that time cannot, at any rate, be said to have occurred during the couRs.of employment.?.

9.The learned counsel for the appellant submitted that there must be some nexus with the employment so that the employer will be liable to pay compensation to the employee.Relying on these judgements, the learned counsel for the appelant submitted that the deceased did not die during and in the couRs.of employment and when the deceased lying on the top of the lorry to protect the goods and at that time he fell down from the lorry and died.

10.Per contra, the learned counsel for the respondents 1 and 2 contended that the order of the Deputy Commissioner of Labour(Commissioner for Workmen Compensation).Dindigul is a well considered one with cogent and valid reasons and has awarded a just and reasonable compensation.

Furthermore, he would contend that the deceased was working as a cleaner in the lorry of the third respondent and he died during and in the couRs.of employment and hence he prayed for the dismissal of the appeal.

11.In support of his contention, the learned counsel for the respondents 1 an d 2 relied on an unreported judgement of the Andhra High Court, dated 28.7.2006, in the case of Senior Divisional Manager, New .versus K.Kiran and another.

?4.The learned counsel appearing for the appellant-Insurance Company submitted that the claimant is the son of the owner of the lorry and that he is not the clearer and further the cleaner is not covered under the policy, as no

additional premium was paid.

In support of this contention, the learned counsel relied on the judgement of the Apex Court in *Ramshray Singh .versus New India Assurance Company Limited and others*.2003(1) DT(SC) 632.

She further submitted that if this Court comes to the conclusion that the cleaner is entitled to compensation, the liability of the Insurance Company is limited under Section 4 of the Workmen Compensation Act, 1923.

In support of this contention, the learned counsel for the appellant relied on the Full Bench Judgement of the Apex Court in *National Insurance Company Limited .versus Prembai Patel* and the judgement of a learned Single Judge of this Court in *Oriental Insurance Company Limited, Warangal .vs.Thudi Mallamma* 2000 (6) ALD461 With regard to maintainability, the learned counsel submitted that as the quantum of compensation is not being questioned and only the liability, no permission need be taken under Section 170 of the Motor Vehicles Act, 1988 and the statutory defenses under Section 149(2) (a) of the said Act, are always available.?.

12.From the above discussions, it is clear that the contention of the appellant/Insurance Company is untenable and unsustainable.

The respondents 1 and 2 have let in evidence to prove that the deceased was lying on the top of the lorry to protect the goods kept in the lorry and at that time only, he fell down from the lorry and died.

Thus it is clearly proved that the deceased died during and in the course of employment as he was lying on the top of the lorry to protect the goods kept in the lorry.

Therefore the judgements relied on by the learned counsel for the appellant are not supporting his contention and hence the same is not acceptable.

The Deputy Commissioner of Labour (Commissioner for Workmen Compensation).Dindigul has fixed the salary of the deceased as per the G.O fixing

minimum wages and applied proper formula and awarded a just and reasonable compensation, which warrants no interference by this Court.

There is no illegality or irregularity in the order of the Commissioner.

Hence the substantial questions of law raised in this appeal are answered against the appellant- Insurance Company and in favour of the respondents 1 and 2 /claimants.

13.For the foregoing reasons, the Civil Miscellaneous Appeal is dismissed and award made in W.C.No.171 of 2009, dated 30.4.2013 on the file of the Deputy Commissioner of Labour for workmen Compensation, Dindigul stands confirmed.

Consequently connected Miscellaneous Petition is dismissed.

No costs.

To The Deputy Commissioner of Labour (Commissioner for Workmen Compensation).Dindigul.

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