

(2012) 10 MAD CK 0211
In the Madras High Court
Case No : C.M.A. No. 2383 of 2008

ICICI Lombard General Insurance Co. Limited

APPELLANT

Vs

Muniammal and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2013) 1 LLJ 158

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; R. Marudhachalamoorthy, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—This civil miscellaneous appeal is filed against the judgment and decree dated 29.9.2007 made in W.C. No. 411 of 2005 by the learned Deputy Labour Commissioner for Workmen's Compensation, Salem, whereby a sum of Rs. 3,28,079/- was awarded to the claimants/the Respondents 1 to 4 herein. The only question that arises for consideration in this appeal is as to whether the Insurer is liable to pay compensation under the provisions of the Workmen's Compensation Act, when the driver, who was on the wheels, died due to heart attack.

2. The claimants/the Respondents 1 to 4 filed the above said claim a claim petition before the Deputy Labour Commissioner for Workmen's Compensation, Salem claiming compensation on ground that the 1st claimant being the widow and the claimants 2 to 4 being the children of the deceased Nachimuthu, who was employed as a Driver under the 1st opposite party before the Deputy Labour Commissioner, are entitled to claim compensation on account of the sudden death of Nachimuthu on 27.9.2004 during the course of the employment. The deceased was driving the lorry bearing Reg. No. KA-03-AB-7997 loaded with heavy goods from Hospet in Karnataka to Goa accompanied by a cleaner V. Chandrasekar. According to the claimants, due to restless duty imposed on the

deceased, he was badly affected both mentally and physically and at Hosapet, as he suddenly felt uneasiness, he stopped the vehicle on the road side and informed the cleaner, who admitted him in the Hospital.

3. It is not in dispute that the deceased was working as a driver with the first opposite party. It is also not in dispute that the deceased was driving the vehicle and developed sudden illness and reported the same to the cleaner, who accompanied him and subsequently, the deceased was taken to the A.J. Hospital and Research Centre at Mangalore. He was admitted for two days as in patient. Due to financial constraint, the claimants were unable to bear the medical expenses and therefore, got the deceased discharged from the said hospital intending to take treatment in their native Village itself. But, however, during the transit from Karnataka to Salem, the deceased died due to internal parenchyma bleeding. According to the claimants, the death of the deceased occurred due to the restless duty imposed by the first opposite party, who remained absent in the proceedings before the Labour Commissioner.

4. The appellant Insurance Company filed objections stating that the appellant is not liable to pay the compensation, since heart attack was not account of stress and strain during the course of the employment and out of the employment. It was further contended that the deceased was suffering from hyper tension and he had past history of hypertension which is also evident from the hospital records. Therefore, it was contended by the appellant that the death of the deceased was not on account of stress and strain during the course of the employment.

5. The Deputy Labour Commissioner, considering the evidence placed on record came to the conclusion that the deceased, while discharging his duty as driver, has felt chest pain which resulted in his death and therefore, the appellant is liable to pay compensation. The said order of the Deputy Labour Commissioner is called in question in this appeal.

6. Mr. N. Vijayaraghavan, the learned counsel for the appellant reiterated the grounds urged before the Commissioner and contended that the appellant is not liable to pay compensation, if a person dies on account of the heart attack while discharging his duties and that simply because the deceased was driving the vehicle, it cannot be said that the development of chest pain is on account of the stress and strain during the course of the employment.

7. Mr. R. Marudhachalamoorthy, the learned counsel for the Respondents 1 to 4 contended that in the absence of contra evidence, the testimony adduced by the claimants through P.W. 1 who is a co-worker has to be accepted. He would further contend that the first opposite party/employer of the deceased chose to remain non-participative in the proceedings before the Deputy Labour Commissioner, leading to an inference that he has admitted that the deceased was employed as driver under him and his death had occurred in consequence to the illness suffered by the deceased on account of the stress and strain in his

duty as driver while he was on duty.

8. In support of his contentions, the learned counsel for the respondents/claimants placed reliance on the decision of the Honourable Supreme Court *Vidhyadhar Vs. Manikrao and Another*, where a party to the suit does not appear into the witness box and state his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. Applying the dictum laid down by the Honourable Supreme Court in the decision cited *supra* to the case on hand, the learned counsel would contend that in the absence of any contra evidence to the evidence of the claimants, a presumption can be drawn that the deceased was working as a driver under the first opposite party and he developed illness, while he was on duty on account of the stress and strain undergone by him during the course of the employment.

9. In the present case, the evidence of P.W. 2, the cleaner who accompanied the deceased while driving the vehicle, indicated that the deceased drove the vehicle continuously prior to his falling ill suddenly and the deceased stopped the vehicle on its way to Goa along with road side, because of the sudden illness he developed due to restless and over work. It is contended before the Deputy Labour Commissioner by the appellant that the deceased had past history of high blood pressure and the same has not been pleaded in the counter. It was raised for the first time before the Deputy Labour Commissioner and the said contention was rejected by the Deputy Labour Commissioner on the ground that there was no material to show that the deceased had pre-existing high blood pressure and was taking treatment for a long time.

10. It is observed by the Deputy Labour Commissioner that undetected high blood pressure could be aggravated by continuous and strenuous physical work like driving a fully laden lorry for such a long distance from Tamil Nadu to Karnataka so as to cause rupture of blood vessels inside the brain causing damage to vital organs that in turn could culminate in death subsequently and it was further held that the strain and stress involved in the work of driving has caused the ailment of the deceased, as a result of which he succumbed to it subsequently.

11. Admittedly, the deceased was a driver and driving the lorry for a long distance from Hosapet to Goa and there was no alternate driver at the time of the accident. Therefore, he was forced to drive the vehicle continuously prior to his falling ill suddenly. In such circumstances, he has developed chest pain and has stopped the vehicle on the road side on the way to Goa. Therefore, I am of the opinion that it is only due to the job strain and stress, that is, continuously driving of a goods loaded lorry for a long distance, has resulted in the death of the deceased causing damage to the vital organs and has resulted in cerebral edema which is evident from the report given by the Hospital Authorities which is extracted below:

Left putaminal bleed with intraventricular and subarachnoid extension, mass effect and cerebral edema.

12. There is absolutely no evidence to show that he had hyper tension and was taking continuous treatment ever before. I am of the considered view that the Deputy Labour Commissioner is justified in coming to the conclusion that the strain and stress involved in the work of driving caused the ailment of the deceased, as a result of which, he succumbed to it subsequently. Therefore, I do not find any infirmity or illegality in the impugned order passed by the Deputy Labour Commissioner and the same is liable to be confirmed and accordingly, it is confirmed. In the result, this civil miscellaneous appeal is dismissed, confirming the impugned award. No costs.