

**(2015) 03 MAD CK 0542**

**In the Madras High Court**

**Case No :** CMA (MD) Nos. 243, 246 to 248, 241, 250 of 2004 and CMP (MD) No. 1813, 1824 to 1826, 1811, 1813, 1834 of 2004

National Insurance Co. Ltd.

APPELLANT

Vs

R. Eswari and Others

RESPONDENT

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**Date of Decision :** 30-03-2015

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 30

**Citation :** (2015) 3 ACC 228

**Hon'ble Judges :** D. Hari Paranthaman, J

**Bench :** Single Bench

**Advocate :** S. Srinivasa Raghavan, for the Appellant; P. Paranthaman, Advocates for the Respondent

**Final Decision :** Dismissed

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**Judgement**

D. Hari Paranthaman, J—On 22.8.2001, the deceased Mariammal in C.M.A. No. 243/2004 and the 1st respondent/claimant in all other appeals were travelling in a Van bearing registration No. TN63B/6378 which involved in an accident. In the accident, mother of the minor claimants in W.C. No. 459/2001 (CMA. No. 243/2004) died and the claimants in rest of the cases numbering 5 women got injured. All of them travelled in the Van as load women to load and unload the bricks. The Van was owned by the 1st respondent in all the claim petitions. The legal heirs of the deceased women and the injured persons filed claim petitions before the Deputy Commissioner of Labour, Madurai, claiming compensation for the death and injuries respectively. Except CMA. No. 243/2004, in all other appeals, the 1st respondent are claimants and in CMA. No. 243/2004, the respondents 1 and 2 are minor claimants who are the daughters of the deceased Mariammal.

2. According to the claimants, the deceased Mariammal and claimants in other cases were traveling as load women. They were travelling to the chamber where the bricks were manufactured. It is their case that the brick chamber is owned by

one Kalyanithevar who is none else than the father of the 1st respondent/M.K. Ramprabu in all the claim petitions. The owner of the Van is the 1st respondent in all the claim petitions while his father is the owner of the brick chamber. The 2nd respondent in all the claim petitions is the Insurance Company with which, the aforesaid Van was insured.

3. The owner of the Van remained ex parte and also did not file any counter affidavit. The Insurance Company took up a plea that the deceased Mariammal and claimants in other cases were not loadman and they were not employed by the Van owner. This was the short issue arose before the Deputy Commissioner of Labour.

4. The Deputy Commissioner of Labour relied on FIR, wherein, it is stated that the brick chamber is owned by one Kalyanithevar who is the father of the Van owner. The same was not seriously disputed by the Insurance Company.

5. According to the appellant Insurance Company in all the appeals, who was the 2nd respondent in all the claim petitions, the women workers were not load women employed in the Van at the time of accident and they were working in the brick chamber. According to the Insurance Company, there was an investigation report in that regard. A witness also was examined on the side of the Insurance Company. He also stated that they arranged for private investigation, but the report of the investigation was not filed. Though it was alleged that they took up the matter to CBCID for investigation, nothing was produced by the Insurance Company in that regard. The Deputy Commissioner of Labour has recorded a factual finding in the following lines:

"On a plain reading of the said FIR shows that the deceased Mariammal and other applicants have travelled in the said vehicle to attend work in the brick chamber belonging to Mr. Kalyanithevar. But the applicant's side contended that they have travelled as loadmen/women. When the 2nd respondent pleaded that the applicants were not the workmen of the owner of the vehicle and they have travelled in the vehicle to work in the brick chamber, they have not filed any investigation report in this regard though the R2W1 admitted in his evidence they have arranged for a private investigation. Moreover, they have not sent any notice to the owner of the vehicle in this regard. After suspecting the claims are bogus one, the Insurance Company have taken this matter to the CBCID, Chennai to reinvestigate in this matter. But from the records available, the 2nd respondent has taken no further follow up action. When there is no clinching evidence to say that the applicants and the deceased Mariammal were workmen of the brick chamber, one has to conclude otherwise as pleaded by the applicants. Moreover, as the lorry was used for carrying raw material and backed Bricks, it would require loadmen. To prove contra, the R2 should have established who are the loadmen. With the available oral and documentary evidences, and applying the theory of preponderance of probability, I hold that the deceased Mariammal was a workman employed by the 1st respondent and she died in an accident arising out of and in the course of her employment."

6. In all the appeals, the only contention of the appellant is that the Deputy Commissioner of Labour erred in holding that the women who travelled in the Van were not the load women employed by the owner of the Van. That is the only substantial question of law sought to be argued before this Court.

7. In my view, the Deputy Commissioner of Labour, has recorded a factual finding, which is extracted above and no question of law is involved muchless a substantial question of law warranting interference of this Court. The Deputy Commissioner of Labour categorically found on facts that the women travelled in the Van were load women employed by the 1st respondent in all the claim petitions, for loading and unloading the bricks and the Van stands in the name of the 1st respondent.

8. In these circumstances, I am of the view that there is no infirmity in the orders passed by the Deputy Commissioner of Labour and the same cannot be termed as perverse since it is a factual finding. It is well settled that unless there is any perversity, this Court could not interfere with the factual finding recorded by the Deputy Commissioner of Labour in the appeals under Section 30 of the Workmen Compensation Act. In the result, all the Civil Miscellaneous Appeals are dismissed and the claimants in all the cases are permitted to withdraw the entire award amount lying in the credit of the respective claim petitions. No costs. Consequently, CMP(MD) Nos. 1813, 1824 to 1826, 1811, 1813 and 1834 of 2004 are closed.