

(2015) 03 MAD CK 0364

In the Madras High Court

Case No : C.M.A.(MD) Nos. 907 to 909 of 2006 and M.P.(MD) Nos. 1, 1 and 1 of 2006 and 1, 1 and 1 of 2013

National Insurance Co. Ltd.

APPELLANT

Vs

Tmt. C. Chellammal and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0364

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant

Judgement

D. Hari Paranthaman, J.

1. C.M.A.(MD) No. 907 of 2006 is filed against the order passed in W.C. No. 214 of 2004, C.M.A.(MD) No. 908 of 2006 is filed against the order passed in W.C. No. 216 of 2004 and C.M.A.(MD) No. 909 of 2006 is filed against the order passed in W.C. No. 215 of 2004, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Dindigul District.

2. In W.C. No. 214 of 2004, the claimants are the legal heirs of the deceased workman-Chinnakaman. The death occurred while the workman was involved in the loading and unloading of sand in the lorry bearing Registration No. TDE-0885.

3. The claimant in W.C. No. 215 of 2004 is the workman by name Manikalai, who was also a loadman employed along with the deceased workman concerned in W.C. No. 214 of 2004. He was also a loadman attached to the lorry bearing Registration No. TDE-0885. He suffered injuries out of and in the course of employment, while his co-workman died due to the accident in W.C. No. 214 of 2004.

4. W.C. No. 216 of 2004 was filed by the legal heirs of the deceased workman-Tmt. Eswari, claiming compensation. The workman was a loadman employed in

the said lorry bearing Registration No. TDE-0885. On 25.03.2004 when the loadman were employed in the lorry bearing Registration No. TDE-0885, the accident took place and two persons died and one got injured. The details of the accident are not necessary for the disposal of these cases.

5. The Commissioner for Workmen's Compensation, Dindigul District, allowed all these three cases and in respect of W.C. No. 214 of 2004, directed the appellant Insurance Company to pay a sum of Rs. 3,36,920/- as compensation. In respect of W.C. No. 215 of 2004, the Commissioner directed the Insurance Company to pay a sum of Rs. 21,719/- and in respect of W.C. No. 216 of 2004, the Commissioner directed the Insurance Company to pay a sum of Rs. 3,74,219/- as compensation.

6. C.M.A.(MD) No. 907 of 2006 has been filed against the award passed in W.C. No. 214 of 2004, C.M.A.(MD) No. 908 of 2006 has been filed against the award passed in W.C. No. 216 of 2004 and C.M.A. (MD) No. 909 of 2006 has been filed against the award passed in W.C. No. 215 of 2004.

7. Though the following three substantial questions of law were framed by this Court on 09.08.2006 at the time of admission, the learned counsel for the appellant has submitted that the crux of the issue is that the lorry involved in the accident was not the one bearing Registration No. TDE-0885 that was insured with them, but another lorry bearing Registration No. TDM-0885.

"1. Whether the insurer can be held liable to indemnify the owner of the vehicle for the death or bodily injury of a workman when his vehicle was not at all engaged in the alleged activity at the time of the accident?

2. Whether an accident is deemed to have taken place arising out of an employment when the vehicle of the insured was not at all engaged by the deceased workman at the time of accident?

3. Whether the insurer is liable to compensate the deceased workman in the absence of privity of contract and in the absence of employer-employee relationship between the deceased workman and the owner of the vehicle?"

8. The learned counsel for the appellant has relied on the First Information Report filed relating to the accident and submitted that the Commissioner was not correct in fixing the liability on the Insurance Company. Therefore, the whole issue is as to whether the accident occurred while the workmen were employed in the lorry bearing Registration No. TDE-0885 or TDM-0885. According to the appellant, the workmen were not employed in the lorry bearing Registration No. TDE-0885 that was insured with them. He submitted that either they would have been employed in the lorry bearing Registration No. TDM-0885 or some other lorry.

9. In my view, it is only a question of fact. The appellants failed to establish their contentions before the Deputy Commissioner of Labour. While the surviving workman who filed W.C. No. 215 of 2004 deposed that the accident took place

only in the lorry bearing Registration No. TDE-0885, the same was not seriously disputed during the cross-examination. Nothing was elicited from the workman in this regard. Furthermore, there was no other relevant material produced by the Insurance Company to establish their claim. Though three persons were examined on the side of the Insurance Company, all those three witnesses spoke only about the change of ownership of the lorry. Though three persons were examined, those witnesses were not able to establish the claim of the appellant that the accident did not take place in the lorry bearing Registration No. TDE-0885. The first witness was Mr. M. Mani, Revenue Inspector of the Revenue Department. He spoke that no permit was given to the lorry bearing Registration No. TDE-0885 for removing the sand from the river. That could not help the appellant to establish his version as he was not aware of the accident. The second witness was the Investigating Officer belonging to the appellant. He admitted that the lorry bearing Registration No. TDE-0885 was insured with them. He stated that he was willing to examine the lorry owner to prove his claim that the workmen were not employed by him. But he did not choose to examine the lorry owner to prove his case. The third witness is also an employee of the Insurance Company. His deposition is only to the effect that the lorry bearing Registration No. TDM-0885 was not insured with the appellant Insurance Company.

10. On the other hand, the injured workman gave evidence that the accident occurred in the lorry bearing Registration No. TDE-0885. Records also disclose that the lorry was transferred to various persons and the loadmen were attached to the lorry even when there was change in the ownership of the lorry.

11. Having taken into account the facts and circumstances of the case, the Commissioner passed the orders fastening the liability on the Insurance Company. It is purely a question of fact. There is no question of law involved. The Commissioner has recorded a factual finding that the accident had occurred only in the lorry bearing Registration No. TDE-0885, after analysing the documents and evidence produced before him. In my considered view, no substantial question of law arises for consideration of this Court, as it is only a factual finding.

12. In the result, the compensation awarded by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Dindigul District, in all these cases, are confirmed and the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.