(2018) 02 MAD CK 0170

In the Madras High Court

Case No : 1043 of 2012

The Divisional Manager APPELLANT

Vs

B.Annalakshmi & Ors RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 MAD CK 0170

Hon'ble Judges : A.M.Basheer Ahamed

Bench : Single Bench

Advocate : S.Kadarkarai, B.Vijay Karthikeyan, A.P.Thirugnanam

Final Decision : Dismissed

Judgement

1. This Civil Miscellaneous Appeal has been preferred against the Order, dated 07.06.2012 passed in W.C.No.179 of 2009, by the Workmen

Compensation Commissioner of Labour, Madurai.

2. Respondents 1 to 3 are claimants, who are L.Rs. of the deceased G.Bharathiyar, who was working as security guard with the 4th respondent

herein. Hence, the 4th respondent is the employer of the deceased. The deceased died on 10.07.2008, in the course of employment, while he

proceeded to join duty as security guard before the 5th respondent Bank. The 4th respondent / employer has taken workmen compensation policy

from the appellant Insurance Company, who is R3 in the claim application. Respondents 1 to 3 are the claimants before the Deputy Commissioner

of Labour / Competent Authority, under the Workmen Compensation Act in W.C.No.179 of 2009, claiming compensation of Rs.2,39,700/-, for

the death of the said Bharathiyar, who was under the employment of 4th respondent herein and also in the course of employment.

3. The 4th respondent / employer did not appear before the authority himself or through any counsel. The 5th Respondent and the appellant herein

alone contested the claim, by filing counter statement before the concerned authority. After producing the evidence produced by the claimants, the

5th respondent Bank/ R2 in the claim petition and the appellant Insurance Company / R3 in the claim petition and hearing the arguments, the

Authority has awarded a sum of Rs.2,54,185/- towards compensation, along with 12% interest / per annum. The insurance Company / 3rd

respondent in the claim petition deposited the above compensation by way of cheque before the concerned Authority and filed the present Civil

Miscellaneous Appeal before this Court.

4. In this appeal R1 to R3 / claimants and R4 employer were set ex-parte, after service of notice.

5. The learned counsel appearing for the appellant would contend that the security guards are insured only to an extent of Rs.2000/-, as their

monthly salary, in view of the terms of the workmen compensation policy and the insurer would only reimburse the injured to the extent of its

liability. But the Authority has directed the Insurance Company to pay the compensation in excess of its liability and hence, the appellant is

disputing the quantum of compensation awarded in the claim petition, by the Competent Authority.

6. The learned counsel appearing for the 5th respondent Bank would contend that there is no employer and employee relationship between the

Bank and deceased and the 4th respondent is the employer of the deceased, on the date of death, and the 4th respondent alone is responsible for

payment of any compensation, as per clause 8 of the agreement, dated 06.01.2005, executed between the 4th respondent and the 5th respondent

and the 4th respondent is bound to pay the compensation and R5 / Bank is not necessary party to the claim of compensation.

7. Perused the materials on record. Heard and considered the rival submissions made by either side.

8. There is no dispute that the deceased Bharathiyar was employed as a security guard, by the 4th respondent and on 10.07.2008, while he

proceeded to join duty as security guard in the Bank of R5, he died in the course of employment of the 4th respondent herein. It is further not disputed that the deceased never joined in the bank / R5 as security guard, as per Ex.P5, dated 10.07.2008 mentioning the date of joining as

10.07.2008 and 11.07.2008. It is further admitted that the workmen compensation policy for the period from 06.11.2007 to 05.11.2008 was

taken by the insured / 4th respondent and was produced as Ex.R3 (Ex.P4), in the evidence of P.W.1, as per the terms of Ex.R3 policy. Premium

of Rs.2457/- for the total cash wages of Rs.4,20,000/- was paid towards 10 employees in the cadre of Supervisors grade of security guard and

premium of Rs.16,548/- for total cash wages of Rs. 28,80,000/- was paid to 120 employees in the cadre of security guard by the 4th respondent

herein. Workmen Compensation Policy / Ex.R3 was in force on the date of death of the said G.Bharathiyar, Security Guard of the first respondent

/ employer.

9. The counsel for the appellants calculated the monthly wages of the deceased security guard in this case as Rs.2,000/- per month while the total

cash wages of Rs.28,80,000/- is divided by 120 numbers of employees and hence, the appellant contended that the insurer is liable to pay only to

pay a sum of Rs.1,59,600/-, by fixing the monthly salary of the deceased as Rs.2000/- towards the loss of income of Rs.2,51,885/- due to death

of G.Bharathiyar and the balance amount of compensation of Rs.92,285/- is to be paid by the insurer / 4th respondent in this case. No record or

document is produced by the insurance company to show the name of 120 security guards with the amount of wages / salary furnished by the

employer / 4th respondent to the Insurance Company / appellant at the time of taking Ex.R3 / Workmen Compensation Policy, as per the terms of

the said policy. Hence, the appellant Insurance Company / R3 failed to prove the fact that the deceased was getting the salary of Rs.2000/- per

month, as contended by the appellant herein. This Court cannot presume the monthly wages of 120 numbers of employees each for Rs.2000/-,

without any record from the Insurance Company also.

10. The respondents 1 to 3 pleaded in their claim petition that the deceased was getting a sum of Rs.3000/- per month and claimed compensation

of Rs.2,39,700/-, but P.W.1 has deposed during her examination that the deceased was getting monthly salary of Rs.5000/-. However, no proof

was filed for the monthly salary either Rs.3000/- or Rs.5000/- per month received by the deceased. The Authority has assessed and fixed the

monthly income of the deceased as Rs.3150/- in the absence of proof of monthly salary of the deceased, as per G.O.No.38, Loabour and

Employment Department, dated 09.11.2005. The 4th respondent has not produced any proof of salary of the deceased, while it is shown in the

proceedings that the employer / R1 also crossexamined the witnesses. Hence, nothing is found wrong in fixing the monthly salary of Rs.3150/-, as

per the said Government Order, in respect of the deceased, for calculating the loss of income, by the Authority / Deputy Labour Commissioner.

11. In the above stated circumstances and also the failure on the part of the Insurance Company to produce the relevant records to show the

names of the employees with amount of salary each at the time of getting the policy, this Court is not inclined to interfere with the order passed by

the Deputy Commissioner of Labour, Madurai, dated 07.06.2012 in W.C.No.179 of 2009 awarding a sum of Rs.2,54,185/- along with interest at

the rate of 12% per annum and directed the Insurance Company / appellant to deposits the above amount as ordered.

12. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. The claimants are permitted to withdraw the amounts, on proper

application.

