
(2014) 08 MAD CK 0109

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD). No. 1587 of 2006 and M.P. (MD). No. 1 of 2006

The New India Assurance Company Limited

APPELLANT

Vs

Lakshmi

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0109

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Judgement

R. Karupiah, J.—This Civil Miscellaneous Appeal is filed against the award passed in W.C. No. 188 of 2006, dated 28.6.2006 on the file of the Workmen's Compensation Commissioner and Deputy Commissioner of Labour, Dindigul and to set aside the same.

2. Heard the submissions made by the learned counsel for the appellant/ Insurance Company and the learned counsel for the respondents and perused the materials available on record.

3. The respondents 1 and 2 filed a claim petition for compensation for the death of one Gopalakrishnan in a Motor Accident occurred on 29.03.2005 during the course of employment. The Deputy Commissioner of Labour after perusal of the oral evidence of claimants P.W.1 and P.W.2 and also the documents produced on the side of the claimants i.e., Ex. P1 to Ex. P6 and oral evidence of the appellant/ Insurance Company and also the policy marked by the appellant/Insurance company as Ex. R1 and finally held that the accident had occurred as stated in the claim petition and awarded total compensation of Rs. 4,22,290/- and directed the appellant/Insurance Company to deposit the above said amount since the above said vehicle duly insured with the appellant/Insurance Company. Aggrieved over the above said finding of the Deputy Commissioner of Labour, the appellant/Insurance Company preferred this Civil Miscellaneous Appeal.

4. The learned counsel for the appellant submitted that the alleged employer and employee are father and son and therefore there is no employer-employee relationship between the deceased and his father; but the Commissioner has failed to consider the said fact. The learned counsel further submitted that the Tractor-Trailer involved in the accident was used for non-agricultural purpose and hence as per the policy, the appellant/Insurance Company is not liable to pay compensation. Further the monthly income fixed for the deceased is also on higher side.

5. Per contra, the learned counsel for the claimants submitted that the father is employer and the deceased son is the employee and there is no bar in the above said relationship of employer-employee relationship and therefore the contention of the learned counsel for the appellant cannot be accepted. Further the learned counsel submitted that to prove the employer-employee relationship between the deceased and his father, P.W.2 also examined. Further the learned counsel submitted that the vehicle involved in the accident was used only for agricultural purpose and not used for non-agricultural purpose as contended by the learned counsel for the appellant and the quantum of compensation is also correctly awarded by the Commissioner.

6. Admittedly, the alleged accident is not disputed. Further the above said vehicle involved in the accident is insured with the appellant and the above said fact is admitted by both sides. In the above circumstances, the main contention of the appellant is that since the deceased and his father are employee and employer, the claimants are not entitled to claim any compensation. The learned counsel for the claimants relied on a decision reported in 2006 ACJ 747 (United India Insurance Company Limited vs. Prakash Shankar Gurav), in which, para 3 reads as under:

3. It is to be noted that a father engaging his son as an employee in a vehicle owned by the father is not prohibited in law nor it can be said that such a situation is not normally possible. Just as in any other avocation, it is possible for a father to engage his son as employee. If this proposition is accepted, the doubt cast on the documents filed by the claimant in support of his contention do not take on much significance.

7. On a perusal of the above said decision reveal that the contention of the claimants is correct. Per contra, on the side of the appellant has not relied on any other decision to substantiate their contention that if father engaged his son as employee, then the claimants are not entitled to claim any compensation as per the Insurance Policy. Therefore the above said contention of the appellant/Insurance Company cannot be accepted.

8. The next contention of the appellant is that the above said tractor and trailer involved in the accident used for non-agricultural purpose. The learned counsel for the claimants submitted that the above said contention is false and the claimants have examined P.W.1 to prove the above said contention. Per contra,

on the side of the appellant has not examined any eye-witness to the occurrence to prove that at the time of accident, the vehicle was used for non-agricultural purpose as contended by the learned counsel for the appellant. The learned counsel for the appellant pointed out that in the First Information Report itself, it is stated as used for non-agricultural purpose. As rightly pointed out by the learned counsel for the claimants, the appellant/Insurance Company has not examined the concerned witness who register the First Information Report and also not examined any other eyewitness to prove the contention that the vehicle was used for non-agricultural purpose. The Commissioner also discussed all the contentions raised by the learned counsel for the appellant and finally held that the appellant is liable to pay compensation. There is no illegality in the above said finding.

9. With regard to the quantum of compensation, the Commissioner has correctly arrived at the compensation considering the relevant factors and it is not excessive as contended by the learned counsel for the appellant. Therefore the first question of law is answered accordingly.

10. With regard to the second question of law is concerned, the learned counsel for the appellant submitted that the deceased was died due to electrocution and therefore the Insurance Company is not liable to pay compensation. As already discussed, the relationship of employer-employee is proved and during the course of employment, the deceased was died due to the injuries sustained in the above said accident and therefore the appellant/Insurance Company is liable to pay compensation and this Court answered the second question of law also as against the appellant/Insurance Company.

11. In the result, the Civil Miscellaneous appeal is dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs. 12.08.2014.