
(2010) 08 MAD CK 0186

Madras High Court

Case No: C.M.A. No. 3706 of 2004

United India Insurance
Co. Ltd.

APPELLANT

Vs

Mrs. Jayakodi and
Others

RESPONDENT

Date of Decision: Aug. 4, 2010

Acts Referred:

- Workmens Compensation Act, 1923 - Section 10, 23

Citation: (2010) 08 MAD CK 0186

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: S. Arun Kumar, for the Appellant; C. Thangaraj, for R1 to R4, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

The appeal is filed by the insurance company u/s 23 of the Workmen's Compensation Act, 1923, against the award dated 14.09.2004 passed in W.C. No. 568 of 2003 on the file of the Workmen Commissioner Court/Workmen Compensation Commissioner, Salem.

2. When the appeal came up on 15.12.2004, this Court has admitted the same, on the following substantial questions of law.

1. Whether the Learned Commissioner is right in fixing the monthly income of the deceased at Rs. 4,000/- in the absence of any evidence whatsoever and in such circumstances ought not the Learned Commissioner fixed the monthly income on the basis of the Minimum Wages Act?

2. Whether the Learned Commissioner is right in holding that there is an employer-employee relationship entirely relying on the pleadings of the 5th respondent herein especially when he has not adduced any oral evidence or produced any documents?

3. Whether the Learned Commissioner is right in holding that the deceased was earning a sum of Rs. 4,000/- per month especially when no documents like Salary certificate etc., were filed prove the income?

3. Background facts in a nutshell are as follows:

One deceased Karthikeyan met with motor traffic accident on 30.06.2003 at about 06.00 hours. He was working as a cleaner in the Lorry bearing registration No. TN-69/Z-5083 belonging to the 5th respondent. While the said lorry was proceeding from Jir-Jera to Dhavekat main road in a rash and negligent manner with high speed, the driver of the lorry lost the control and hence the lorry was capsized. Due to the impact, the deceased sustained grievous injuries and died. The claimants are mother, brother and sisters of the deceased. They filed a claim petition u/s 10 of the Workmen's Compensation Act before the Deputy commissioner for Labour and claimed compensation of Rs. 5,00,000/-. The said lorry was insured with the appellant insurance company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the deceased employee was died in the course of employment or not?
2. What is the age and monthly salary of the deceased?
3. What is the compensation the claimants are entitled to and from whom?

After considering the oral and documentary evidence, the Deputy commissioner for Labour held that that accident had occurred only during the course of employment and awarded compensation of Rs. 4,52,760/- and a further sum of Rs. 2,500/- towards funeral expenses, totalling Rs. 4,55,260/-, and the computation of the same are as under:

- | | |
|--------------------------------|---|
| 1. Age | = 18 |
| 2. Relevant factor | = 226.38 |
| 3. Monthly salary | = Rs. 4,000/- |
| 4. computation of compensation | = $50/100 \times 4000 \times 226.38$ = Rs. 4,52,760/- |

Aggrieved by that order, the appellant insurance company has filed the present appeal.

4. The Learned Counsel appearing for the appellant insurance company submitted that the Deputy Commissioner for Labour has awarded excessive, exorbitant compensation and also without any basis and justification and vehemently contended that the Tribunal ought not to have fixed the monthly income of the deceased at Rs. 4,000/- without any basis. Therefore, the award passed by the Deputy Commissioner for Labour is not in accordance with law and the same should be set aside.

5. The Learned Counsel appearing for the claimants submitted that the Deputy Commissioner for Labour has considered all the facts and circumstances of the case and awarded just, fair and reasonable compensation. Therefore, the award passed by the

Deputy Commissioner for Labour is in accordance with law and the same should be confirmed.

6. Heard the counsel. On the side of the claimants, P.W.1 is the claimant Jayakodi was examined and documents Exs.P1 to P5 were marked. Ex.P1 is the FIR, Ex.P2 is the registration certificate of the vehicle, Ex.P3 is the insurance policy, Ex.P4 is the post-mortem certificate were marked. On the side of the appellant insurance company, no one was examined and no document was marked to substantiate their claim. After considering the above oral and documentary evidence, the Deputy Commissioner for Labour has given a categorical finding that the accident had occurred only during the course of employment.

7. At the time of accident, the deceased was aged about 18 years. Ex.P4 is the post-mortem certificate, in which, it is stated that the age of the deceased was 18 years. Therefore, the Deputy Commissioner for Labour fixed the age of the deceased at 18 years. The claimants stated that the deceased was earning Rs. 4,000/- per month. The Learned Counsel for the appellant vehemently contended that there is no evidence available on record to show that the deceased was earning Rs. 4,000/- per month. Further, the Deputy Commissioner for Labour ought to have relied on the Minimum Wages Act to determine the monthly salary of the deceased. The monthly salary of the deceased as per the Minimum Wages Act, is at Rs. 3,107/-. Therefore, it is reasonable to award a sum of Rs. 3,107/- towards monthly salary of the deceased as against Rs. 4,000/- awarded by the Tribunal. There is no dispute regarding the relevant factor and therefore, the same is confirmed and the computation of the modified compensation are as under:

=50/100x3107x226.38 =	Rs. 3,51,681.33/-
Funeral expenses =	Rs. 2,500.00/-
Total =	Rs. 3,54,181.33/-

8. The compensation of Rs. 3,54,181.33/- is rounded off to Rs. 3,54,200/-. Therefore, the claimants are entitled to the modified compensation of Rs. 3,54,200/- as against Rs. 4,52,760/- awarded by the Deputy Commissioner for Labour. It is stated by the appellant, that the entire award amount has already been deposited and the first respondent was also permitted to withdraw Rs. 1,55,000/-. Under these circumstances, the mother of the deceased i.e., the first respondent is permitted to withdraw her share, less the amount already withdrawn on making proper application. The share of the minors is directed to be deposited in any one of the nationalised banks till they attain majority. The mother of the deceased i.e., the first respondent is permitted to withdraw the interest accruing on the minors' share once in three months. In the result, the substantial questions are answered

in favour of the appellant.

9. With the above modifications, the appeal is disposed of. No costs.