
(2011) ACJ 2141

Madras High Court (Madurai Bench)

Case No: C.M.A. (MD) No. 1255 of 2008

Branch Manager,
National Insurance Co.
Ltd.

APPELLANT

Vs

Sivakami and another

RESPONDENT

Date of Decision: July 15, 2009

Acts Referred:

- Constitution of India, 1950 - Article 12
- Workmens Compensation Act, 1923 - Section 10, 2(1), 22

Citation: (2011) ACJ 2141

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: Mr. N. Murugesan, for the Appellant; G. Arokiasamy, for the Respondent

Final Decision: Dismissed

Judgement

Kirubakaran, J.

The appeal has been filed by the appellant insurance company against the award passed by the Commissioner for Workmen's Compensation in W.C. No. 418 of 2005 filed under sections 10 and 22 of the Workmen's Compensation Act by the claimant.

2. The case of the respondent No. 1-claimant before the Commissioner was that deceased workman, Thangavel, was working as a driver under the respondent No. 2 (owner) herein in his Maruti Omni bearing registration No. TN 38-F 3220. On 17.1.2005, the deceased, during the course of his employment, was driving the vehicle from Coimbatore to Namakkal, which suddenly dashed against a roadside tree and due to that the workman was injured. Immediately, the workman was taken to Dr. Rex Hospital, R.S. Puram, Covai and he died in the hospital.

3. The case of the respondent No. 1-claimant was that her husband died in the course of his employment as a driver under the respondent No. 2 (owner) herein in his Maruti Omni van and was aged about 66 years and earning about a sum of Rs. 5,000 per month. Hence, the claim petition was filed for a sum of Rs. 5,00,000.

4. The appellant insurance company contested the claim of the respondent No. 1 and denied the employer and employee relationship of the deceased with respondent No. 2. Para 4 of the counter statement of the appellant is extracted as follows:

The respondent No. 1 is not the owner of Maruti Omni TN 38-F 3220 at the time of accident. It is understood that the respondent No. 1 had sold the said vehicle to the present owner S.V. Sai Prasad and left for abroad about 3 years ago. It is said that the same has been put in use by him for hire.

5. Apart from that there was another defence taken in the counter statement that the accident had taken place on 17.1.2005 and it was reported to the police only on 21.1.2005. There was a further plea in para 7 of the counter statement that daughter and son of the deceased were not made as parties to the claim petition.

6. On the side of respondent-claimant, the claimant was examined as PW 1. The following documents were marked on her side:

F.I.R. copy	Exh. P1
Discharge summary given by Arvind Hospital	Exh. P2
Discharge summary issued by Dr. Rex Hospital	Exh. P3
Wound certificate	Exh. P4
Post-mortem certificate	Exh. P5
Driving licence	Exh. P6
Vehicle"s registration certificate	Exh. P7
Insurance policy	Exh. P8
Death certificate	Exh. P9
Driving licence	Exh. P10
Vehicle"s registration certificate	Exh. P11

Vehicle"s	Exh. P12
insurance	
policy	
ME Report	Exh. P13
Claim	
petition	
made to	
the	
appellant	
insurance	
company	Exh. P14
Letter given	
to the	
appellant	
insurance	
company	Exh. P15

7. On behalf of the owner, Sai Prasad was examined and on behalf of insurance company one Ram Kumar was examined. PW 1 deposed before the Commissioner that her husband was working with the respondent No. 2 (owner) herein as a driver of Maruti Omni van and during the course of the employment, he died and hence, she claimed the amount as per the claim petition. Sai Prasad, PW 2, deposed that the vehicle was owned by the respondent No. 2 (owner), who is his younger brother and he is residing abroad and managing the affairs of the vehicle on behalf of his brother (owner). He also admitted that the accident took place while the deceased was driving the vehicle on 17.1.2005.

8. The appellant examined an officer from its company as RW 2 and he deposed that there was no relationship of employer and employee between the deceased and the respondent No. 2 (owner) herein and hence, the insurance company is not liable to pay the amount. Apart from that there was violation of policy conditions as LPG was used for running the vehicle and the said vehicle was used for transporting passengers.

9. The Commissioner, on appreciation of pleading and the evidence adduced before him, came to the conclusion that there was employer and employee relationship between the deceased and respondent No. 2 (owner) herein and hence, as an insurer the appellant insurance company was liable to pay the compensation. Though a sum of Rs. 5,00,000 was claimed, based on the Government G.O., as per Minimum Wages Act, the monthly income was fixed and the compensation was arrived at Rs. 1,93,439 and awarded. Against the said award only, the present appeal has been filed.

10. While admitting the appeal, the following questions of law were framed by this court:

(1) Whether the learned Commissioner had failed to note that in order to invoke the indemnity of the insurer it must be proved that the deceased had died during the course of employment arising out of an accident?

(2) Whether the relationship of employer and employee did exist between the deceased and the owner of the vehicle?

11. The learned counsel for the appellant assailed the award contending that there was no employer and employee relationship between the deceased and the respondent No. 2 (owner) herein and the brother of the respondent No. 2 alone was managing the affairs of the vehicle. He himself had appointed the deceased as the driver of the vehicle and hence, the claimant could not get any compensation for the death of the deceased, who was not appointed by the owner of vehicle. Apart from that, learned counsel for the appellant contended that the deceased was only working with the owner for a period of one year. On the other hand, the counsel for the respondent supported the award.

12. Section 2 (1) (e) of the Workmen's Compensation Act, 1923, speaks about the definition of "employer", which is extracted as follows:

"employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him

13. The aforesaid definition would show that it is an inclusive definition, not only means the original employer but also includes any managing agent of an employer. When the statute is plain and so categorical, the contention of the insurance company that the brother of the owner was managing the affairs of the vehicle and he only appointed the deceased as driver and hence, the deceased would not come under the definition of workman is liable to be rejected. In fact, the contention of insurance company goes against the very statute itself. It is very unfortunate, a statutory corporation like the appellant corporation takes such an unreasonable and illegal stand contrary to statute.

14. The very contention of appellant insurance company is against the public policy. Hence, the contention of the insurance company is to be deprecated. Nobody, whether an individual or government or government-sponsored corporation, can be allowed to take a stand in violation of a statute. There should be a fairness and reasonableness in the stand taken by the appellant which is expected of a statutory undertaking. It should not fight like a private litigant. It has been decided in a number of cases, unless otherwise, the statute is amended or set aside it is valid and governs everybody and especially the insurance company, which is sponsored by the government which comes under the definition of statute under Article 12 of the Constitution of India.

15. Apart from that, the counsel for the appellant contended that PW 2 admitted in the cross-examination that he was managing the affairs of the vehicle and he only appointed the deceased as a driver that too for one year. Hence, he tried to convince this court stating that the acts done by the brother of the owner could not be construed as act done by the owner.

16. First of all, the Tribunal should not have allowed the insurance company to put a suggestion either to PW 1 or PW 2, for the simple reason that there was no such pleading in the counter statement filed by insurance company that Sai Prasad, PW 2, was managing the affairs of the vehicle. In fact the appellant only pleaded that the vehicle was sold to Sai Prasad and not as contended by the counsel for appellant. It is well settled law that any amount of evidence is of no avail, unless it is supported by pleading. In the absence of the pleading, the Commissioner should not have allowed such a suggestion to be put and the same should not have been recorded as evidence. Even if it is recorded, that has to be ignored and the same cannot be relied on by the appellant. In any event the employer-employee relationship was proved by the evidence of PW 1 and PW 2. Hence, the question of law (2) is answered against the appellant.

17. PW 1 as well as PW 2 deposed that accident occurred during the course of and out of employment. The said fact was also proved before the Commissioner through documentary evidence. Apart from that, RW 1, an officer of the appellant insurance company, admitted in his evidence that the accident occurred and the workman died. Tribunal based on the evidence of RW 1 found as follows:

(Omitted as in vernacular)

18. RW 1 admitted in his evidence that he did not know what was used for driving the vehicle at the time of accident. When the insurance company took a specific plea that LPG was used for running the vehicle it should positively prove such a plea by adducing evidence in that regard and there was a violation of policy conditions by use of LPG.

19. The Commissioner rightly concluded that the accident occurred during the course and out of employment and the deceased/the workman died in the accident. Hence, the first question of law is also answered against the appellant.

20. Both points were answered against the appellant. This court is not going into details with regard to quantum, as there was no appeal against the quantum by the appellant insurance company. In view of the above, the appeal fails and accordingly dismissed.

21. Accordingly, the appeal is dismissed. Consequently, connected miscellaneous petitions are closed.