

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31 -8-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

C.M.A.No.1593 of 2007 & M.P.No.1 of 2007

The New India Assurance Co.Ltd.,
No.45, Moore Street,
Chennai - 600 001.

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Appellant/III Opposite Party

Vs.

1. S. Vijayalakshmi

2. Minor S. Pooja

3. M/s.Ashok Leyland Ltd.,
Corporate Office-II,
Khivraj Complex,
477-482, Anna Salai,
Nandanam,
Chennai - 35.

4. M/s.Universal Trading Co. Ltd.,
C-3, Arunodaya Apartments,
Second Madley, T.Nagar,
Chennai - 600 017.

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Respondents/Respondents 1 & 2
and opposite parties 1 & 2

This Civil Miscellaneous Appeal is preferred against the award dated 12.04.2007 in W.C.No.242 of 2005 on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour - I, Chennai.

For Appellant

:

Mr.N.Vijayaraghavan

J U D G M E N T

By consent, the main civil miscellaneous appeal is taken up for final disposal.

2. This Civil Miscellaneous Appeal is filed challenging the order passed in W.C.No.242 of 2005 dated 12.4.2007 passed by the Deputy Commissioner of Labour, Chennai, awarding compensation of Rs.3,14,285/- to the respondents 1 and 2 herein.

3. The brief facts necessary for disposal of the appeal are as follows:

(a) The respondents 1 and 2 herein filed the claim petition contending that the third respondent herein is the Principal employer, one of the leading Heavy Vehicle Manufacturing Company, having its branches and sales depots at various places in India and the 4th respondent herein is the contractor to transport the chasis vehicle from Chennai to Alwar, Rajasthan State. The 4th respondent engaged one Sekar as driver to drive the Chasis vehicle 'AL TUSKAR SUPER GOODS CHASIS' bearing Trade Plate No.TN 20TC 0286 and Chasis/Engine Nos.UWE523201/UWE390036 from sales yard, Kathivakkam to regional Sales Office, Alwar, Rajasthan by road.

(b) During transit of the said vehicle, on 26.2.2004 at about 9.00 a.m. in Maharashtra State, while the said Sekar was driving the chasis, due to the impact of stress and strain, he died. The said Sekar was having a heavy vehicle driving licence and was receiving Rs.6,000/- per month as salary, including incentives and that he was aged 35 years. The first respondent is the widow of the said Sekar and the second respondent herein is the daughter of Sekar.

(c) The accident was registered in Nagpur Taluk Police Station, Ahmednagar District, with Accident Death Registration No.8 of 2004. The said Chasis was insured with the appellant Insurance Company, with policy No.710500/31/03/29155 from 1.1.2004 to 31.12.2004 and cover note No.16468 dated 20.2.2004. Since the said Sekar died during the course of the employment, his widow and daughter filed the above claim petition claiming compensation of Rs.10 lakhs under the Workman Compensation Act, 1923.

(d) The said claim petition was resisted by the appellant Insurance Company, by contending that the said Sekar died due to the impact of stress and strain occurred during the transit of the said heavy duty chasis and not because of any accident and therefore the Insurance Company is not liable to pay any compensation.

4. The Deputy Commissioner of Labour, considering the Police report, Insurance Policy, Death Certificate, Heavy Motor Vehicle licence and Legal Heirship Certificate produced by the claimants, and having found that the accident had occurred during the course of the employment and the vehicle was insured with the appellant as on the date of the accident, held that the appellant is bound to pay compensation under the Workmen Compensation Act, 1923. The Deputy Commissioner also found that the deceased was aged 34 years and was entitled to be assessed the minimum wage of Rs.3,229.40 as per G.O.Ms.No.(2)102 Labour and Employment Department, dated 22.9.1999 and arrived at a compensation of Rs.3,14,285/-. The appellant Insurance Company was directed to pay the said amount within 30 days failing which, the appellant was directed to pay 12% interest from the date of the application i.e., on 14.3.2005.

5. The learned counsel for the appellant argued that the death of the Sekar having been taken place not because of any accident, the appellant Insurance Company is not liable to pay compensation and there is no nexus between the employment and the death. The learned counsel also cited the decision of the Supreme Court reported in 2007 ACJ 1 (Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another) to substantiate his contention.

6. The point in issue is whether the deceased Sekar was the driver of the Chasis and whether the death had occurred during the course of the employment and whether the appellant, being the Insurance Company, is bound to pay compensation to the claimants.

7. The deceased was employed as driver and during the course of the employment, that is, while he was driving the Chasis at Maharashtra, due to stress and strain, he died. The police report Ex.M-2 also discloses the same. The said Chasis having been insured, the Insurance Company viz., the appellant is bound to pay compensation under the Workmen Compensation Act, 1923. The contention that no accident had taken place and hence the Insurance Company is not liable to pay compensation cannot be raised when the claim is made under the Workmen Compensation Act, 1923.

8. The Supreme Court decision cited by the learned counsel for the appellant reported in 2007 ACJ 1 (Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another) will not help the appellant in any manner as the person, who died in the said case was a cleaner of the lorry, and the cleaner of the lorry may not have any stress or strain like the driver and that the death due to heart attack to the said cleaner was not found strenuous as he suffered cardiac arrest when he was getting down from the vehicle. In paragraph 29 of the Judgment, the Supreme Court held that circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of the work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed and no legal friction can therefore be raised. It is also held that each case has to be considered in its own facts and no hard and fast rule can be laid down therefor.

9. In this case, there is a clear pleading in the claim petition that the deceased died at Maharashtra at about 9.00 a.m. on 26.2.2004 while he was employed as driver, due to the impact of stress and strain during transit of the said heavy duty chasis from Madras to Alwar. The Deputy Commissioner of Labour also gave a specific finding that the deceased Sekar died when he was riding the chasis and he was not having any such disease previously and he died only due to stress and strain. In view of the said categorical finding, which is pleaded and established that the said Sekar died during the course of the employment due to stress and strain, the Deputy Commissioner of Labour, Chennai, is right in ordering compensation. Insofar as the quantum also the authority applied Minimum Wages Act and arrived at just compensation.

10. I do not find any merit in the civil miscellaneous appeal and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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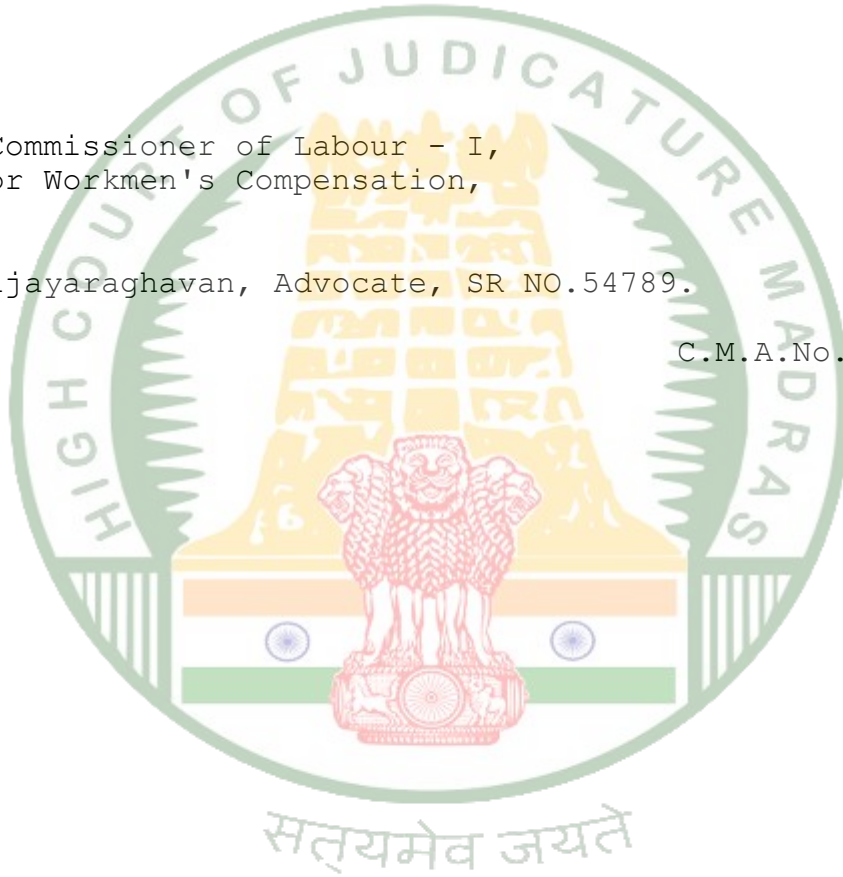
To

1. The Deputy Commissioner of Labour - I,
Commissioner for Workmen's Compensation,
Chennai.

1 CC To Mr.N.Vijayaraghavan, Advocate, SR NO.54789.

C.M.A.No.1593 of 2007

KG(CO)
RVL 07.09.2007



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