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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2026

CORAM

THE HON'BLE DR. JUSTICE P. MURUGAN

C.M.A.(MD) No. 1040 of 2022

CNR:{HCMD011101952018}

and

C.M.P.(MD) No. 10309 of 2022

The Branch Manager,
M/s National Insurance Co. Ltd.,
Branch Office No.63, Rasi Plaza,
West Pradhakshinam Road,
Karur. .. Appellant

Vs.

1. R.Mallika,
   W/o (late) Ramalingam,
   No.33, Indira Nagar,
   South Gandhigramam,
   Pasupathipalayam Post,
   Karur.

2. R. Divya Bharathi,
   D/o (late) Ramalingam,
   No.33, Indira Nagar,
   South Gandhigramam,
   Pasupathipalayam Post,
   Karur.

3. Minor R. Bharath,
   S/o (late) Ramalingam,
   No.33, Indira Nagar,
   South Gandhigramam, Pasupathipalayam
   Post, Karur.
   (Rep. by his mother R. Mallika - R1)

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4. M. Rajammal,
W/o (late) Manikkam,
No.33, Indira Nagar,
South Gandhigramam,
Pasupathipalayam Post,
Karur.

5. K. Muniyappan,
S/o Kuppanna Pillai,
No.24, Keerakara Street,
Karur. ..Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 30 of Employee's Compensation Act, to *set aside* the award dated 13.06.2018 made in W.C.No.79 of 2013 on the file of the Commissioner of Workmen Compensation (Tribunal), Dindigul, served on 25.06.2018 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr. I. Robert Chandra Kumar

For Respondents : Mr. N.Sudhagar Nagaraj

J U D G M E N T

The Insurance Company, who is the second respondent in W.C.No.79 of 2013 on the file of the Commissioner of Workmen Compensation, Dindigul, is the appellant before this Court, challenging the compensation order dated 13.06.2018 passed in W.C.No.79 of 2013, where claim petition filed by the legal

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representatives of the deceased Ramalingam was partly allowed.

2. The litigative status of the parties is referred to as it stood before the Tribunal that the appellant is the second respondent / Insurance Company, the respondents 1 to 4 are the petitioners, who are the claimants and the fifth respondent is the first respondent, who is the owner of the vehicle.

3. The brief case of the claimants before the Tribunal is as that the first petitioner is the wife; the petitioners 2 and 3 are children; and the fourth petitioner is the mother of one Ramalingam. The said Ramalingam worked under the first respondent as driver for the past one year. The first respondent is the owner of the lorry bearing Registration No.TN-45-AF-5887. The first respondent insured the said lorry with the second respondent. Ramalingam earned Rs.20,000/- per month as wages and Rs.20,000/- per year as bonus from the first respondent. During the course of employment, the said Ramalingam drove the said lorry for loading and stationed the vehicle on 16.05.2013 night at CMDA Steel Yard, Sathankadu inside at Tiruvottiyur, Chennai. When the said Ramalingam was in the course of employment in the said lorry, on that day of 16.05.2013 unexpectedly fallen down from the lorry and sustained

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grievous injuries in his head and over all body. As a result, the said Ramalingam died on the spot. Having the petitioners are legal heirs of the deceased Ramalingam, who was working under the first respondent, they are entitled to get workmen compensation of Rs.12,00,000/- (Rupees Twelve Lakhs only). Hence, they approached the Tribunal for such award.

4. Brief counter of the first respondent, who is the owner of the subject vehicle referred above, is as that the deceased Ramalingam worked under the first respondent as a lorry driver to the lorry bearing Registration No.TN-45-AF-5887 for the past one year and he was earning Rs.20,000/- per month as wages and Rs.20,000/- per year as bonus. On the fateful day of 16.05.2013, he was entrusted the said lorry for loading from CMDA Steel Yard, Sathankadu inside, Tiruvottiyur, Chennai. In the course of employment, the said Ramalingam unexpectedly fallen down from the lorry and sustained multiple injuries and then died. The other facts in the claim statements are denied. The first respondent availed insurance from the second respondent under the Workmen's Compensation Act. If any award is passed, the second respondent is liable to pay the compensation, as the insurance policy was valid and

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in force on 16.05.2013.

5. Brief counter of the second respondent is as that all the allegations in the claim statement is denied. There is no employer and employee relationship between Ramalingam and the first respondent. The death was not occurred during the course of employment. The monthly wages and other aspects are denied. As per F.I.R, the deceased Ramalingam was under the influence of alcohol heavily, before falling down. Therefore, the second respondent is not liable to pay any amount.

6. During the enquiry, to establish the case facts, the first petitioner / Mallika herself examined as P.W.1 and 7 documents were marked as Exh.P1 to Exh.P7, which are கு.ஐ.சுன் post mortem சநிழசவ் viscera சநிழசவ் R.C. ழெளம் insurance policy of the first respondent vehicle insured with the second respondent; driving licence of the deceased Ramalingam and legal heir certificate of Ramalingam. On the side of the employer / first respondent one Arumugam was examined as R.W.1 and no document was marked. On the side of the insurance company / second respondent, the senior assistant, Mr.Gowthaman was examined as R.W.2 and 2 documents were marked as Exh.R1 and

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Exh.R2, which are post mortem report of the deceased Ramalingam and the insurance policy respectively.

7. After hearing both parties, the Tribunal had come to a conclusion that the deceased Ramalingam was working under the first respondent, his death was during the course of employment, there was employer and employee relationship and finding that the first respondent availed insurance from the second respondent, determined the deceased age was 44 years and applying proper age factor awarded Rs.6,64,116/- (Rupees Six Lakhs Sixty Thousand One Hundred and Sixteen only) as total compensation eligible to be received by the claimants. Having the first respondent availed the insurance with the second respondent for Workmen's Compensation Act, the second respondent was directed to pay the said amount together with interest at 12% per anuum from the date of accident fill the date of realisation. Against the said order, the insurance company filed this appeal.

8. This appeal was admitted on 09.11.2022 with the following substantial question of law:

(i) Whether the Commissioner of Workmen Compensation has erred in rendering a

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finding that the claimants are entitled to get compensation from the appellant under the Workmen Compensation Act, despite showing that the deceased workman was found in drunken condition during working hours and that the said accident cannot be said to have arisen or during the course of employment?

9. Heard both sides. Perused the records. Considered the submissions raised by both sides.

10 (a). The learned counsel for the insurance company contended that though the first respondent availed workman insurance policy with the second respondent as per Exh.R2 equivalent to Exh.P5 for the period from 11.08.2012 to 10.08.2013, wherein the accident was occurred on 16.05.2013, in which, the insurance was in force. But as per F.I.R - Exh.P1, the deceased Ramalingam was in a drunken condition. As per the F.I.R given by one Mr. Pommuraj, who is the cousin brother of the deceased Ramalingam, reveals that on the fateful day of 16.05.2013, the deceased Ramalingam consumed alcohol and the deceased accidentally slipped from the lorry cabin and fallen down.

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10 (b). Having influenced with the alcohol as per section 3(1)(b)(i) of the Employee's Compensation Act, 1923 (herein after referred as '1923 Act'), when the employee is under the influence of alcohol or drugs at the time of the accident, the employer shall not be liable to pay compensation. Section 3 of 1923 Act, provides the rights of the employee to claim compensation, against the owner, who is insured with the insurance company. Proviso to the sub-section (1) in clause (b) (i), says when the employee having been at the time thereof under the influence of drink or drugs, the employer is not liable, thereby, fastening such liability on the employer and directing the insurance company making to pay compensation is not right. Therefore, the appeal has been filed.

11. Though the deceased's cousin brother Mr.Pommuraj has given first information to the police, wherein, the deceased was consumed alcohol during night of 16.05.2013 and when the informant wake up at 02.00 am and when he was intended to see the said Ramalingam, went near to the lorry, found the deceased lying on the earth. On his enquiry, the deceased at the time of alive told him when he intend to climb the ladder to reach the lorry cabin, he

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accidentally fallen down and sustained injury. When he tried to lift the injured into the hospital, the ambulance technician told him that the person died. Then the body was shifted to the hospital.

12. As per the post mortem report in Exh.P2, there is no mention about alcohol found. It says the stomach contain 30 ml of straw coloured fluid with no specific odour. As per Exh.P2, *post mortem* certificate issued by the Government Stanley Medical College, Chennai, did not say about any alcohol found in the deceased Ramalingam's stomach. The *post mortem* was conducted on 16.05.2013 at about 01.15 pm, that is within 11 hours from the death of the deceased. As per the viscera report in Exh.P3, no poison was found, but, there is no mention about any alcohol found from the tissue taken from the deceased. When the medical opinion, Exh.P2-*post mortem* report and Exh.P3-viscera report, did not say about the deceased found alcohol and, therefore the contention of the insurance company that the deceased consumed alcohol is without any basis.

13. The informant Mr.Pommuraj, who is the cousin brother of the deceased Ramalingam, has given F.I.R stating that when he saw the deceased at night on 16.05.2013, who was found in a

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drunken condition and thereafter he had seen the deceased at 02.00 am. Even though the cousin brother of the deceased had given complaint that the deceased consumed alcohol what was the steadiness of the deceased and the percentage of the alcohol mixed in the blood, there is no evidence. Even the insurance company failed to examined the said Pommuraj to establish the surrounding circumstances. Though the F.I.R stated that the deceased consumed alcohol before his death, but as per Exh.P2-*post mortem* and Exh.P3-viscera report, there is no whisper about the deceased consumed alcohol. If the deceased consumed alcohol higher than the quantity prescribed, certainly the alcohol consumed could have been mixed in the blood. Having there is no medical evidence that the deceased consumed alcohol, it cannot be a ground that the deceased fallen down and died out of the alcohol condition.

12. The other aspect that the deceased was the employee under the first respondent, which is also proved, is not disputed by the insurance company. The other aspects, monthly wages and age factor determined by the Tribunal are not disputed. Having the first respondent availed workmen insurance as per the policy in Exh.P5, it was availed for goods carrying, the deceased was a driver under

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the employment date of 16.05.2013, where he possessed valid licence are not in dispute. Thereby, the legal heirs are entitled to claim compensation under the 1923 Act. Therefore, looking into all the aspects, the Tribunal award is found correct and there is no requirement to interfere into the same.

13. In such view of the matter, the substantial question of law is answered against the insurance company. Thereby, the appeal is devoid of merits and accordingly, it is dismissed. There is no order as to costs.

14. In the result:

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) The award passed by the Tribunal, made in W.C.No.79 of 2013 dated 13.06.2018 is confirmed; and

(iii) There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The Deputy Commissioner of Labour,
Dindigul,

Copy To :
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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DR. P. MURUGAN, J.
LS

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