



CMA(MD).No.1452 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.03.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1452 of 2016

and CMP(MD).No.12084 of 2016

The Branch Manager
ICICI Lombard General Insurance Company Ltd.
Tirunelveli Junction
Tirunelveli

...Appellant

vs.

1.R.Velsamy

2.N.Ashirvatham

3.A.Ambika

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act 1923, to set aside the award passed in W.C.No.36 of 2012 on the file of the Labour Deputy Commissioner Court, Workmen Compensation, Tirunelveli dated 08.08.2016 and allow this appeal.

For Appellant
For R1
For R2 & R3

: Mr.V.Muthukamatchi
: Mr.R.Saravanan
: Mr.T.Selvakumaran



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JUDGMENT

The appeal has been filed by the insurance company challenging the award passed by the Deputy Commissioner of Labour Cum Authority under the Workmen Compensation Act, Tirunelveli in W.C.No.36 of 2012 on the ground of liability.

2.The parents of the deceased minor boy had filed a claim petition contending that the deceased was employed with the first respondent tractor owner and while he was in employment as a loadman, he had died. Hence, they have prayed for a compensation of Rs.4,57,080/-.

3.The owner of the tractor cum trailer had remained exparte and the insurance company had filed a counter and contended as follows:

(i).The tractor alone is insured with the second respondent insurance company under 'Miscellaneous Vehicles Package Policy Act' and it was insured for the purpose of agricultural activities.

(ii).Except the driver of the tractor and personal accident coverage to the owner cum driver, no other employee including the loadmen are covered under the policy.



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(iii).The vehicle was registered for the purpose of agricultural activities and at the time of accident, it was used for carrying sand for commercial purposes. Therefore, there is a clear violation of the policy conditions.

(iv).The deceased was attempting to carry out illegal mining of sand at about 4.00 a.m on 30.07.2010. At that point of time, the sand had collapsed and the deceased was covered by the sand and he had passed away. Therefore, the insurance policy does not cover the illegal activities of the insured person.

(v).At the time of alleged accident, the tractor and trailer were stationery and hence, there was no connection whatsoever with the accident and the insured vehicle.

4.The Commissioner of Workmen Compensation after considering the oral and documentary evidence had arrived at a finding that the deceased was employed with the first respondent as a loadman. He had further arrived at a finding that the vehicle involved in the accident was insured with the second respondent insurance company. On the technical ground that there is no policy coverage of the loadman, the insurance



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company cannot escape. The Commissioner had also relied upon a judgement of the Karnataka High Court and our High Court to arrive at a finding that the loadmen are also covered in the insurance policy of a commercial vehicle and the insurance company is liable to pay compensation. Ultimately, the Commissioner had arrived at a quantum of Rs.6,39,198/- and directed the insurance company to deposit the said amount. The said award is under challenge in the present appeal.

5.The learned counsel for the appellant had contended as follows:

(i).The insurance policy covers only the driver of the tractor and it does not cover any other employee of the tractor.

(ii).The vehicle has been registered only for agricultural purposes. However, the vehicle has been admittedly used for illegal mining of sand for commercial purposes. Therefore, it is clear that there is a violation of the policy conditions.

(iii).At the time of accident, the tractor and trailer were stationery and while digging the sand, it had collapsed and the deceased had passed away. Therefore, there is no connection whatsoever with the usage of the vehicle with the accident. Therefore, the insurance under the Motor



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Vehicles Act not covers the liability under the Workmen Compensation Act. In view of non coverage of the alleged loadman in the insurance policy, the insurance company is not liable to pay any compensation.

(iv).The Commissioner under Workmen Compensation Act had erroneously directed the insurance company to pay compensation without considering the nature of insurance policy.

(v).The learned counsel for the appellant had relied upon the judgment of our High Court reported in **2008 (2) TN MAC 302 (Iffco-Tokio General Insurance Co.Ltd., Vs. Tmt.Sulochana and others)** and the judgment of Karnataka High Court reported in **2013 (1) TN MAC 615 (Kar.)(Divisional Manager, ICICI Lombardo General Insurance Co.Ltd., Vs. Mudiyappa and another)** to contend that unless the additional premium is paid by the insured person to cover the loadmen, the loadmen are not covered under the policy. Hence, he prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the respondents had contended as follows:

(i).The policy is a Miscellaneous Vehicle Package Policy. Being a



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package policy, the said policy covers all the employees of the insurer including the loadmen.

(ii).It is not necessary that the vehicle should be in motion for claiming compensation under Motor Vehicles Act. Even when the vehicle is stationery and there is some casual connection between the vehicle and the accident, the insurer is liable to pay compensation.

(iii). The learned counsel for the respondents had relied upon the judgment of our High Court reported in ***2017 (1) TN MAC 184 (New India Assurance Co.Ltd. Vs. Murugan and others)*** to contend that even the coolies on the trailer attached to the tractor are entitled to receive compensation from the insurance company on the ground that they are third parties.

(iv).The respondents had also relied upon the judgement of our High Court in ***CMA(MD).No.559 of 2015 (The Divisional Manager, United India Insurance Co.Ltd., Vs. Kalaivani and others)*** dated 22.11.2017 to contend that where the policy is a Farmer's Package Insurance Policy, the insurance company is liable to pay compensation



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for loadman even though no separate premium was paid in respect of them.

(v).The learned counsel for the respondents had further relied upon the judgement of our High Court *in CMA(MD).No.2559 of 2010 (M/s.New India Assurance Co.Ltd., Vs. Veerammal and another)* dated 21.02.2018 to contend that the loadmen are covered in a package policy and in the absence of any exclusion clause to the contrary, the insurance covers the claimants. Therefore, according to the respondents, the award passed by the Workmen Compensation Commissioner may not be disturbed.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The tractor cum trailer was parked in the river bed at the time of accident. The deceased was illegally mining the sand to the depth of 10 feet and at the relevant point of time, the sand had collapsed and he had died on the spot. Therefore, it is clear that the vehicle was not in operation at the relevant point of time and the loading and unloading operations were also not going on at the time of accident. Digging of the



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sand alone was going on at the relevant point of time. There is no evidence on record to establish that the sand was being loaded into the trailer at the time of accident. Therefore, there was not even a causal connection between the accident and the vehicle involved in the alleged accident.

9.A perusal of the insurance policy which is marked as Exhibit R1 indicates that it is a Miscellaneous Vehicle Package Policy. Apart from basic third party liability, a premium has been paid in the trailer under India Motor Tariff -30. Apart from that, a premium has been paid under IMT-40. When premium is paid under IMT-40, it covers the legal liability of the insurance company to indemnify the insured to any injuries or death of the paid driver, conductor, cleaner/ employee in connection with the operation of the motor vehicle and it covers the liability under Workmen Compensation Act, 1923 also.

10.A perusal of IMT-40 also indicates that each one of the drivers or conductors or cleaners, a sum of Rs.25/- has to be paid as premium. In the present case, a sum of Rs.25/- has been paid as premium which covers only one person namely the driver. Therefore, it is clear that the



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payment of premium under IMT-40 would cover only a paid driver or conductor or cleaner and it does not cover the loadmen. Only if the premium is paid under IMT-39-A, it covers legal liability under Workmen's Compensation Act, 1923 in respect of the carriage of more than 6 people in goods carriage vehicle. Therefore, in the present case, the basic third party premium when it does not cover the loadmen and the additional premium has been paid under IMT-40, the loadmen are not covered under the policy.

11. Admittedly the vehicle has been registered for agricultural purposes. However, at the time of accident, the vehicle was proposed to be used only for carrying sand from the river bed which is a commercial purpose. Therefore, there is a clear violation of the statutory provisions as well as the policy conditions.

12. Our High Court in a judgement reported in **2008 (2) TN MAC 302 (Iffco-Tokio General Insurance Co.Ltd., Vs. Tmt.Sulochana and others)** has held that in the absence of any contract specifically covering workmen, loadman or coolie, the insurance company cannot be mulcted with the liability.



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13. In view of the above said deliberation, it is clear that the premium paid under India Motor Tariff-40 does not cover the loadman. Moreover, there is no connection whatsoever with the vehicle and the accident in which the deceased had passed away. When there is no coverage at all, the question of directing the insurance company to satisfy the award and recover the same from the owner of the vehicle does not arise. The Workmen Compensation Commissioner had rejected the legal submission made on the side of the insurance company on the ground that they are technical objections and has proceeded to pass the award as against the insurance company.

14. The defence of non coverage of the insurance policy cannot be considered to be a mere technical objection. The Workmen Compensation Commissioner was not right in mulcting the liability upon the insurance company. Therefore, this Court is of the opinion that the award of the Workmen Compensation Commissioner is liable to be set aside insofar it is against the appellant/insurance company. The quantum of the award of the Commissioner under Workmen Compensation Act is hereby confirmed. However, the appellant is exonerated from the

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liability. The entire award amount has to be satisfied only by the first respondent in the claim petition namely the owner of the tractor. The substantial questions of law are answered in favour of the appellant. The Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

21.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Labour Deputy Commissioner
Workmen Compensation Act, Tirunelveli

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
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