IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

MFA.No. 78 of 2015 ()

AGAINST THE ORDER IN ECC 153/2014 OF THE COMMISSIONER FOR EMPLOYEES' COMPENSATION (INDUSTRIAL TRIBUNAL), ALAPPUZHA DATED 07-08-2015

APPELLANT(S)/2ND OPP. PARTY:

NATIONAL INSURANCE COMPANY LTD.
CHITTOOR ROAD, SOUTH JUNCTION, KOCHI -682016
REPRESENTED BY THE DY. MANAGER, REGIONAL OFFICE
KOCHI-682035.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/APPLICANTS AND OP1.:

1. DEVAYANI
W/O.LATE SIVAN, KALATHILPADY HOUSE, VALLAPPUZHA
CHERUKODE POST, PALAKKAD-679 336.

2. DEEPA
D/O.LATE SIVAN, KALATHILPADY HOUSE, VALLAPPUZHA
CHERUKODE POST, PALAKKAD-679 336.

3. BLUE CHIPS MINES AND INDUSTRIES
REPRESENTED BY ITS MANAGING PARTNER, T BABURAJ
THOTTATHIL HOUSE, NEDUMBASSERY POST, ALUVA-683 585.

R1 & R2 BY ADV. SRI.C.A.CHACKO

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.
~~~~~~~~~~~~~~~~~~~~~~~~~~
M.F.A. (WCC). No. 78 of 2015
~~~~~~~~~~~~~~~~~~~~~~~~~
Dated, this the 7th day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been filed by the Insurance Company being aggrieved of the verdict passed by the Commissioner for Employees' Compensation, granting compensation under a 'miscellaneous policy' beyond the agreed extent, in respect of the employment injury sustained by the husband of the first respondent and father of the second respondent, leading to his death, while serving as an employee in the third respondent establishment.

2. The deceased was working in a quarry belonging to the third respondent. During the course of his employment, he sustained serious injuries on 26.08.2011 and bid farewell to this world. This was sought to be compensated by filing 'Employees Compensation Case' before the Commissioner for Employees' Compensation.

3. The third respondent employer did not choose to contest the matter and was set ex-parte. The appellant insurance company contended that their liability could only be to the extent as payable by reckoning the declared monthly wage of Rs. 1333/-. It was also pointed out that, as per the agreed terms and conditions of the policy,

no liability to any higher extent, particularly by way of interest, cost etc. was liable to be enshouldered by the insurer.

4. The claim put up by the claimants before the Commissioner was that the deceased was having a monthly salary of about Rs.10,000/-. By virtue of the terms of the relevant provisions of law, the maximum income of Rs.8000/- was reckoned by the Commissioner and adopting the appropriate factor as per the schedule, the total compensation payable was fixed at Rs.5,84,800/-, which was directed to be satisfied with interest @ 12% p.a. from 26.09.2011. Observing that a valid insurance policy was in existence, the liability came to be mulcted upon the shoulders of the appellant herein, which made them to approach this Court by filing the appeal.

5. Heard Sri. Rajan Kaliyath, the learned counsel appearing for appellant as well as the learned counsel appearing for the respondents 1 and 2. The delay was condoned after completing service of notice to the respondents. There is no appearance for the 3rd respondent company, who did not contest the matter even before the Commissioner.

6. The factual position as to the extent of liability agreed to be covered by the policy issued by the Insurance Company was

never disputed by the 3rd respondent/employer before the Commissioner, as no written statement was filed. Despite completing service of notice from this Court in the C.M. Appln. as well, the third respondent company has paid only scant regards to the process of this Court, presumably for the reason they do not intend to dispute the facts and figures put forth by the appellant, particularly the wage declared before the insurer at the time of availing the policy and terms of coverage.

7. Admittedly, it is not a statutory policy but a miscellaneous policy issued on the basis of the specific terms of the proposal and agreement. It is settled law that the terms of the policy have to be strictly construed, it being an instance of contract. It is also settled law that no wider liability, than the amount covered by the policy, could be fastened upon the shoulders of the insurance company, as made clear by a Division Bench of this Court in **National Insurance Company Ltd. Vs. Murali [2013 (3) KLT 209].**

8. In the above circumstances, this Court finds that the liability of the appellant insurance company to satisfy the claim is only to the extent by reckoning the maximum wage limit as Rs.1333/- p.m. and there cannot be any liability with regard to the

satisfaction of interest and cost. At the same time, it has to be borne in mind that the amount awarded by the Commissioner is based on the available facts and figures as put forth by the claimants and as such, the balance portion requires to be satisfied by the 3rd respondent/employer. It is open for the 1st and 2nd respondents to proceed against the 3rd respondent by way of appropriate proceedings. Since the liability of the appellant Insurance company is only to the declared extent as above, the amount already deposited by the company in excess (to facilitate filing of this appeal in terms of the provisions of the Statute) shall stand returned to the appellant forthwith.

Appeal stands allowed. No cost.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
ANIL K. NARENDRAN,
JUDGE

kmd

/True copy/

P.A. to Judge