IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2620 of 2015
and
M.P.No.1 of 2015

National Insurance Co.LTd.,
Divisional Office-II,
No.16, State Bank Road,
Coimbatore - 641018. ... Appellant/2nd Opposite Party

vs.

1.Smt.M.Mary ..1st Respondent/Applicant

2.The Management,
M/s.Parry Agro Industried Ltd.,
Murugali Estate,
Valparai. .. 2nd Respondent/1st Opposite party

Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1928 against the order dated 29.7.2015 in W.C.No.77 of 2013 passed by the Commissioner for Workmen Compensation-II/Deputy Commissioner for Labour, Coimbatore - 641 018.

For Appellant : Mr.Nageswaran for
Nageswaran & Narichania



JUDGMENT

Aggrieved by the award passed by the Commissioner for Workmen Compensation-II/Deputy Commissioner for Labour, Coimbatore, awarding a sum of Rs.1,66,413/- in W.C.No.77 of 2013 for the first respondent / injured, the National Insurance Co.Ltd., has preferred this Appeal.

2. Challenging the correctness of the award in respect of awarding interest and also awarding compensation towards

hospitalisation charges, based on the two of the conditions mentioned in the Employees Compensation Insurance Policy issued by the appellant Insurance Company, the learned counsel for the appellant Insurance Company would submit that as per the policy terms and conditions, payment of interest and payment of hospitalisation charges were not covered by the policy. Without going into the terms and conditions of the policy, the Tribunal awarded interest and reimbursement of hospitalisation charges. Therefore, the approach adopted by the Tribunal is erroneous for the simple reason that insurance contract is purely based on the terms of the contract between the parties, hence, the parties are bound by the terms of the contract of insurance policy. Adding further, the learned counsel appearing for the appellant Insurance Company would submit that the Commissioner under Workmen Compensation Act has also committed yet another error by relying on the disability certificate issued by the Doctor PW.2 who gave evidence regarding the injury suffered by the first respondent due to the accident. During his cross examination, the Doctor PW.2 has clearly admitted that he has not given any treatment to the petitioner/first respondent. Since the Doctor who has examined the injured has not come forward to speak about the injury and also the nature of disability suffered by the first respondent, the Commissioner under the Workmen ought not to have relied on the disability certificate and the evidence of Doctor. Hence, on these grounds, the learned counsel appearing for the appellant Insurance Company would pray for setting aside the award.

3. Heard the learned counsel for the appellant and perused the materials available on record.

4. After going through the pleadings and evidence adduced and after hearing the arguments advanced by the learned counsel appearing for the appellant, the question that arises for consideration in this case is as follows:-

> (i) Whether the policy of insurance is strictly governed by the terms and conditions farming part of the policy?
>
> (ii) Whether the insurer/appellant is liable to pay any compensation beyond the scope of policy issued by them?
>
> (iii) Whether the appellant / second opposite party is liable to pay the hospitalisation charges?

(iv) Whether the Insurer could be independently held liable for compensation when there is no proof of age, salary paid or wages paid to the claimant?

(v) Whether the percentage of loss/earning capacity is reasonable and in consonance with the injury suffered by the workman/applicant?

5. All the above points are taken up together for discussion. It is an admitted case of both the parties that on 28.7.2012 the first respondent herein was engaged for the work in plucking tea leaves in Field No.16-B as per the instructions given by the field supervisor Palanisamy. While so, she was plucking tea leaves in the tea plantation belonging second respondent herein, at around 2.00 p.m., she fell down and sustained bone fracture in her left leg and she was taken to estate hospital by estate Ambulance and she was given first aid and then she was sent to Coimbatore Medical College Hospital by 9.30 p.m., and subsequently, she was taken to Ganga Hospital by 10.40 p.m., where she took treatment and underwent surgery and was discharged from hospital on 6.8.2012. Therefore, the first respondent took treatment from 28.7.2012 to 6.8.2012 as inpatient. She also produced sufficient evidence to show that a sum of Rs.78,500/- was spent at Ganga Hospital, Coimbatore. For the reason that the first respondent/worker suffered 30% permanent disability and lost her earning capacity, the authority under the Workmen Compensation Act has taken out average monthly income of 12 months, which was worked out to a sum of Rs.3,309/- per month. Therefore, by applying 30% disability and multiple factor, the authority under the Workmen Compensation worked out the compensation to a sum of Rs.91,183/- (i.e. Rs.3,309 X 60/100 X 153.09 X 30/100). Based on Ex.P.6 Medical Bills (Series), the authority under the Workmen Compensation Act, awarded a sum of Rs.75,230/- towards medical bills. As such, the authority under the Workmen Compensation Act has granted a sum of Rs.1,66,413/- against the entire claim of Rs.3,00,000/- sought for by the worker. Therefore, this Court sees no infirmity in such finding nor on the quantum.



6. Further, while awarding interest, the authority under the Workmen Compensation Act, heavily relied on the judgment of the Apex Court in P.J.Narayanan vs. Union of India and others reported in 2004 ACJ 452 wherein it was held that "an insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract

that they will not take on liability for interest. In the absence of any statute to that effect, Insurance Company cannot be forced by courts to take on liabilities which they do not want to take on". Therefore, as long as there was no such clause refusing the liability of interest in the insurance contract, the insurance company is liable to pay interest also, therefore, all the points are answered accordingly.

7. For the reasons stated above, this Court is unable to find any infirmity in the impugned award. Hence, the Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition is closed.

8. Since it is reported that the entire award amount has been deposited, it is for the first respondent/worker to move the authority under the Workmen Compensation Act by filing proper application for withdrawal of the award amount with interest accrued thereon.

sd/-
Assistant Registrar(J)

/TRUE COPY/

Sub-Assistant Registrar

asvm

To

1.The Commissioner for Workmen Compensation-II/
Deputy Commissioner for Labour,
Coimbatore - 641 018

2.The Section Officer,
VR Section, High Court, Madras

C.M.A.No.2620 of 2015
and
M.P.No.1 of 2015

CO-VGI
JD 18/01/2016