IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2015

C O R A M
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.1230 of 2009
and
M.P.Nos.1 of 2009 and 1 of 2011

National Insurance Company Ltd.,
Branch Office,
No.2, Paramathi Road,
Namakkal. ...Appellant

Vs.

1. Palaniammal
2. Rahuman, minor
3. Raveena minor
minors/R2 and 3 are rep. by R1/,their mother as natural guardian
4. R.Rajendran ... Respondents

PRAYER:
Civil Miscellaneous Appeal filed against the judgment and decree,, dated 29.08.2007, passed in M.C.O.P.No.253 of 2006, on the file of the Motor Accident Claims Tribunal District Judge, Perambalur.

For Appellant : Mrs.N.B.Surekha

For Respondents 1 to 3 : Mr.S.Kamadevan

JUDGEMENT

The Insurance Company, who is the second respondent before the Tribunal, is the appellant herein.

2. The claimants are the widow and minor children of one Sekar, who was the victim of the fatal accident, while travelling in a Mini Lorry, bearing Registration No.TN 57- C 2172, as cleaner of the Lorry, belonging to the first respondent/owner and insured with the second respondent/Insurance Company before the Tribunal.

3. The Tribunal rejected the contentions raised by the Insurance Company that the deceased was travelling in the Mini Lorry as gratuitous passenger and allowed the claim, and, having

found that the deceased was on the date of the accident, aged 35 years and was earning Rs.3,000/- per month as cleaner of the Lorry, determined the loss of dependency of the claimants at Rs.4.08,000,by applying the multiplier method and by adding reasonable compensation under other heads, awarded total compensation of Rs.4,17,500/-.Aggrieved by the same, the present Appeal is filed by the second respondent/ Insurance Company before this Court.

4. The Insurance Company has in this Appeal questioned the enforceability of the impugned award mainly by denying its liability to indemnify the owner on the sole ground that the cleaner is not one of the employees covered under the terms of Ex.R.1/Insurance Policy.

5. The learned Standing Counsel for the appellant/Insurance Company has also drawn the attention of this Court to Ex.R.1/Policy. As per the schedule of premium, the premium paid was basic and also to cover owner-cum-driver. The learned Standing Counsel would in support of her contentions against the liability fastened on the Insurance Company to answer the claim of the legal representatives of the deceased, who is not covered under the Insurance Policy, cited the following three authorities:-

i) A.I.R. (2002) S.C. 651 (1) in re (New India Assurance Co. Ltd., Vs. C.M.Jaya and others).

ii) C.D.J. (2003) S.C. 657 in re (Ramashray Singh Vs. New India Assurance Co. Ltd., and others).
and
iii) (2007) 2 T.N.MAC 9 S.C. in re (Oriental Insurance Company Ltd., Vs.Meena Variyal and others).

6. The learned counsel for the respondents 1 to 3/claimants, in order to defend the validity and enforceability of the award passed against the Insurance Company, cited the following authorities:-

i) (2009) 1 TN MAC 458 (DB) in re (S.Murugan and another Vs. M.Veenainathan).
and
ii) (2004) 2 TN MAC 43 (SC) in re (Ramashray Singh Vs. New India Assurance Co. Ltd.,)

7. Heard the rival submissions made on both sides and perused the records.

8. As already stated supra, Ex.R.1/Insurance Policy, which is a comprehensive policy, does not cover cleaner, as no premium was paid to cover the claim of the cleaner. The judgments cited on the side of the appellant/Insurance Company would fortify their contention that the liability of the Insurance Company was not unlimited, merely on the ground that the insured has taken a comprehensive policy and insured is bound by the terms of the contract as specified in the Policy with regard to unlimited or higher liability, as the case may be, and in the absence of such a term, or clause in the Policy, the limited statutory liability cannot be expanded to make it unlimited, or higher, and the insurance policy only covers persons, or classes of persons specified in the Policy and the insurer is not bound to cover additional risk without any payment of additional premium.

9. The Hon'ble Supreme Court in the judgment cited on the side of the appellant/Insurance Company by observing so, absolved the Insurance Company from paying any compensation to the injured, or to the legal representatives of the deceased, who was not covered under the terms of the Policy or limited liability to the extent to which, insurance is covered.

10. Though the law laid down by the Hon'ble Supreme Court is binding on all, the same is distinguishable for following reasons:-

i) Though the cleaner of the Mini Lorry belonging to the insured is not one of the employees covered under the terms of Insurance Policy, he met with accident during the course and arising out of employment. The learned counsel for the claimants, at this juncture, relied upon the decision of the Hon'ble Supreme Court reported in (2009) 1 TN MAC 458 (DB), (cited supra) referred to in para No.12 of the judgment rendered by the Division Bench of our High Court, viz., in S.Murugan's case (cited supra). In the case decided by the Hon'ble Supreme Court, it has clearly held that even assuming that the deceased and the injured did not belong to category of employee covered by the premium, as he was in the vehicle in the course of employment, the Insurance Company though cannot be made liable in accordance with the provisions of the Motor Vehicles Act, they will definitely have to satisfy the requirement of the Workmen's Compensation Act.

ii) The learned counsel for the respondents 1 to 3/claimants also cited another decision of the Hon'ble Supreme Court rendered in (Oriental Insurance Company Vs. Kalaiya pillai, (2003) A.C.J. 1021, referred to in para No.13 of the judgment rendered by the Division Bench of our High Court, viz., in S.Murugan's case (cited supra) wherein also, the Hon'ble Supreme Court laid down the same principle that though the insurer was not liable under the provisions of Motor Vehicles Act, it would be proper to assess the compensation under the Workmen's Compensation Act and to award in favour of the claimants, who are the legal representatives of the deceased tractor driver, who died in the course of his employment.

iii) In the very same judgment, viz., in Oriental Insurance Company's case (cited supra), it is further held that the Court, without driving the party to go by way of independent claim petition under the Workmen's Compensation Act, can proceed to assess the compensation under the Workmen's Compensation Act, and determine the compensation and restrict the liability of the appellant/Insurance Company to that extent.

11. This Court, by applying the principle laid down by the Hon'ble Supreme Court in Oriental Insurance Company's case cited supra and following the same course adopted by the Division Bench of our High Court in S.Murugan's case (cited supra), is inclined to assess compensation under the Workmen's Compensation Act and restrict the liability of the Insurance Company to that extent. On the basis of the findings rendered by the Tribunal, the deceased was, on the date of the accident, aged about 35 years and his monthly income was Rs.3,000/- and the factor to be adopted as per schedule 4 of the Workmen's Compensation Act for age group of 35 years is '197.06' and the award of compensation is, hence, fixed as follows:-

"Rs.3,000/- x 50/100 x 197.06 = 2,95,590/-"

which is rounded off to Rs.3,00,000/-

12. In the result, the impugned award is modified from Rs.4.17,500/- to Rs.3,00,000/-, payable with interest at 12% p.a. on completion of 30 days from the date of accident. Out of the total amount of Rs.3,00,000/-, the claimants 1 to 3 are entitled to get Rs.2,00,000/-, Rs.50,000/- and Rs.50,000/- respectively. The appellant/Insurance Company is directed to deposit the modified award amount with interest and costs, if not already deposited, within four weeks from the date of receipt of the copy of this Judgment. If the compensation amount is already deposited, the Insurance Company is permitted to withdraw the excess amount lying in the deposit. The Tribunal is directed to deposit the minors' share in the compensation amount in any of the Nationalized Bank in a fixed deposit, till they attain majority. The first claimant/mother is permitted to withdraw her share of Rs.2,00,000/- along with interest and costs and also permitted to withdraw the interest and costs, due to the minors' share, by filing due application before the Tribunal. The first claimant/mother is also directed to withdraw the future interest accrued on the deposit of the minors' share once in three months, directly from the Bank. The excess Court fee is also directed to be refunded to the claimants.

13. The Civil Miscellaneous Appeal is accordingly ordered. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar(CSII)
dt:15/10/2015

True Copy

Sub-Assistant Registrar

sd

To
The Motor Accident Claims Tribunal,
District Judge, Perambalur

+1 cc to Mr.S.Kamadevan Advocate sr.42150
+1 cc to M/s.N.B.Surekha Advocate sr.42132

C.M.A.No.1230 of 2009

aa16/10/2015