

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A.No.609 of 2006
AND IN CMP.NO.2497 OF 2006

National Insurance Company Ltd.,
No.81D, Chetty Street,
Thiruchengod.

.. Appellant/2nd Respondent

Vs.

1. Malliga

..Ist Respondent/Appellant

2. Dhanalakshmi Agro Service,
82A, Water Tank Street,
C.H.B.Colony, Tiruchengod.

.. 2nd Respondent/Ist opposite
Party

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the
Workmen Compensation Act, against the Order passed by the learned
Workmen Commissioner, Salem in W.C.No.281 of 2003 dated 14.02.2005.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.C.Kulanthaivel for R1

JUDGMENT

The second respondent/insurer before the Commissioner for Workmen
Compensation is the appellant herein.

2. For the sake of convenience, the parties are referred to as
per their rank before the Commissioner for Workmen Compensation.

3. The claimant by name Malliga is the mother of one Sivakumar,
who was employed as cleaner under the 1st respondent in his lorry
bearing Registration No.TN-43-7610, insured with the 2nd
respondent/Insurance Company. On 10.01.2003 at about 4.30 p.m., the
cleaner Sivakumar was engaged in cleaning work in the lorry and after
finishing his work, he was removing rod changer wire that was hanging
down and at that time, it was connected with three phase electric wire

and he was electrocuted and died on the spot. As the accident occurred resulting in the death of the employee in the course of his employment, the mother came forward with the claim petition seeking compensation of Rs.5 lakhs. The claim petition was not contested by the 1st respondent/employer but was seriously contested by the 2nd respondent/Insurance Company. The 2nd respondent/Insurer has in his counter denied the employer employee relationship between the 1st respondent and the deceased. The insurer also denied his liability to pay the compensation on behalf of the employer on the ground that the accident took place after the cleaning work was over. It is also contended that the lorry, in which he was employed as a cleaner, was used only as a platform on which, the compressor and rig unit was fixed and the accident taken place, while cleaning the rig, which was used for digging bore well, and the accident was not occurred, when the lorry was under use.

4. The Tribunal on the basis of the oral and documentary evidence arrived at a conclusion that the deceased was aged about 20 years and was earning Rs.2,768/- per month and he died by electrocution in the course of his employment and the 1st respondent/employer is liable to pay compensation to the legal heirs cum defendants of his deceased employee and the second respondent/insurer is liable to indemnify the insured of the vehicle. The Tribunal rejected the contention of the insurer that the lorry, on which the rig and compressor fixed, was not a road transport vehicle and the policy covered only the personal damage caused to the driver and not the cleaner of such vehicle and awarded Rs.3,10,016/- as compensation to the mother. Aggrieved against the same, the present Civil Miscellaneous Appeal is filed before this Court by the second respondent/Insurer.

5. This Civil Miscellaneous Appeal is admitted on the following substantial questions of law:

"1. Whether the learned Workmen Commissioner is right in fixing the liability for payment of the compensation upon the appellant when the vehicle, which was insured with the appellant was not in motion and it was used as a platform to perform the rig unit for digging borewell.

2. Whether the learned Workmen Commissioner is right in not considering the fact that the accident had occurred only due to the negligence act of the workman, when he had performed the act outside the purview of his employment as a cleaner."

6. Heard both sides and perused the records.

7. Here again the 2nd respondent/Insurer would reiterate the same stand that when the vehicle, which was insured with the 2nd respondent/Insurance Company was used only as a platform to perform the rig unit for digging bore well and the accident taken place, while the vehicle was not in motion, as such the Insurance Company is not liable to pay any compensation to the claimant. The same issue is directly dealt with by this Court in the case reported in 2006 (2) CTC 368 (National Insurance Company Limited V. Arumugham). In the other case also, the employee was electrocuted and died when the rig unit was in the operation. The Commissioner for Workmen Compensation reached the conclusion that the employee died in the course of his employment and the lorry along with the rig unit was covered by valid insurance policy and accordingly held that the insurer is liable to pay compensation of Rs.1,81,879/-. When the same was challenged before this Court contending that the policy did not cover the accident caused to the cleaner, as there was no additional premium paid specifically covering such a nature of employment.

8. The learned Single Judge of this Court having found that the policy was taken in respect of Ashok Leyland Rig Unit and the payments made under policy include premium for the driver and/or cleaner and that the policy issued was subject to Terms Exception and Conditions of the Commercial vehicles Insurance B-policy and IMT Endorsement mentioned therein 17,14,24,26 and 70 and having found that as per Clause 17, the legal liability to persons employed in connection with the operation and/or unloading of goods carrying commercial vehicles is also covered under the policy and after having found that there was no condition No.37 excluding the liability of the insurer, negated the contention raised on the side of the insurer and confirmed the impugned award of compensation passed by the Commissioner for workmen compensation.

9. As rightly argued by the learned counsel for the 1st respondent/claimant that the same is applicable to the facts of the present case wherein also the policy is taken for Ashok Layland vehicle and the additional premium was paid covering personal injury or death caused to 7 employees. In that event, the observation of this Court in the judgment above referred is squarely applicable to the facts of the present case. As such this Court is compelled to hold that the Commissioner for workmen compensation has rightly fastened the liability on the insurer to answer the claim of the mother and this court finds that no valid ground to interfere with the impugned award. The substantial questions of law are hence answered, against the appellant.

In the result, this Civil Miscellaneous Appeal is dismissed with the liberty given to the claimant to withdraw the entire compensation amount already deposited, on due application. No costs. Connected CMP.NO.2497 of 2006 is closed.

Vsm

Sd/-

Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

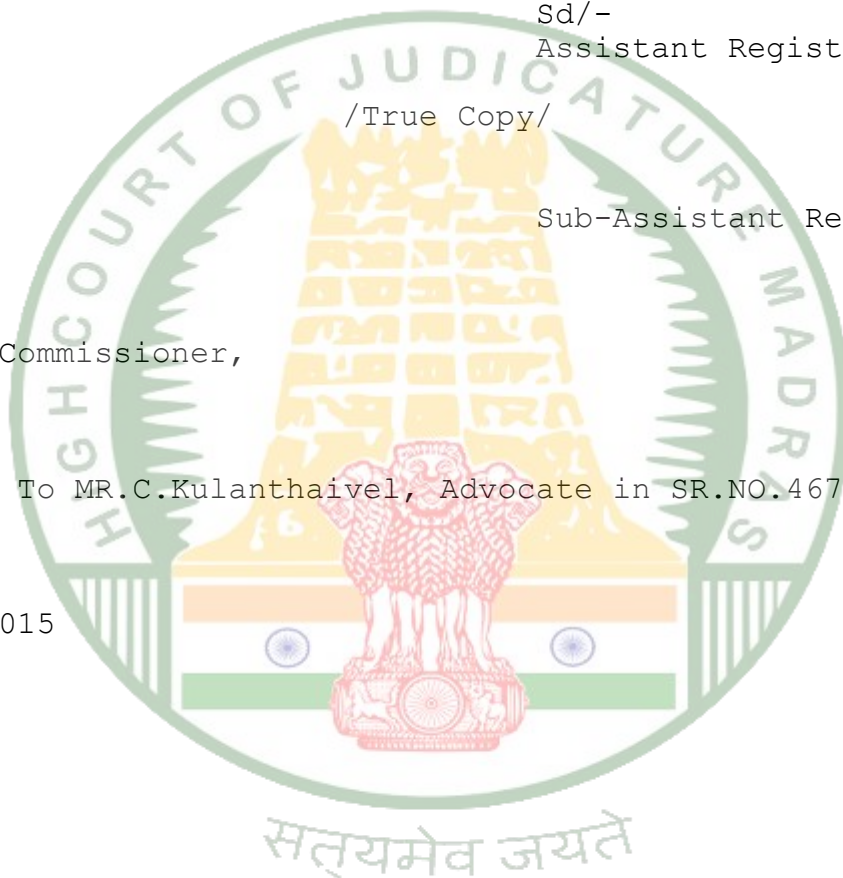
To

The Workmen Commissioner,
Salem.

+1 C.C. To MR.C.Kulanthaivel, Advocate in SR.NO.46701 of 2015.

CA (CO)

sd : 13/10/2015



WEB COPY