

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2015

CORAM

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

C.M.A.Nos.3411 and 3845 of 2004

M/S.United India Insurance Co. Ltd.
Branch office,
Gobichettypalayam.

...Appellant/2nd respondent
in both the appeals

Vs.

1.V.Thulasi Ammal

...1st Respondent/Petitioner
in CMA No.3411 of 2004

1.K.P.Lakshmi

...1st Respondent/Petitioner
in CMA No.3845 of 2004

2.A.T.Elango

...2nd Respondent/1st Respondent
in both the appeals

Prayer: Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, against the award dated 07.06.2004 made in W.C.Nos.609 and 607 of 2002 on the file of the Workmen Commissioner, Deputy Commissioner of Labour, Salem and served on the appellant on 27.07.2004.

For Appellant : Mr.T.Ravichandran

For R1 : Mr.MA.P.Thangavel

JUDGMENT

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

2.Heard the learned counsel for the appellant and the first respondent/claimants and perused the records.

3.The second respondent-insurer before the Commissioner for Workmen's Compensation is the appellant in both the cases. Both the appeals arising out of the same accident occurred in the course of employment of the claimants under the first respondent/employer in both the claim petitions. The Tribunal having accepted the case of the claimants in all aspects and having rejected the objections raised on the side of the respondents awarded compensation of Rs.2,94,886/- and Rs.3,00,610/- to the injured claimants. The first respondent-Employer did not challenge the award of compensation and the award is challenged only by the second respondent-insurer.

4.Both the appeals are admitted on the following questions of law:

"(i)Whether the learned Commissioner is right in holding that the deceased is an employee under the second respondent?

(ii)Whether the learned Commissioner is right in holding that the deceased died during and in the course of employment?

(iii)Whether the learned Commissioner is right in holding that the deceased was earning a sum of Rs.2,699.56 per month?"

5.At the time of arguments, the additional substantial questions of law framed are:

(1)Whether the vehicle on which the rig was mounted can be treated as transport vehicle? and

(2) Whether the employees are covered under the policies?

6.Before going into other issues, the first additional substantial question of law is to be considered first. The identical issue is in the following judgment dealt with and decided against the insurance company in 2006 (2) CTC 368 (National Insurance Company Limited, No.7, Raja street, Gobichettypalayam, Erode District v. Arumugham and others) and 2007 (4) CTC 374 (National Insurance Company Limited, Branch Office, No.7, Raja street, Gobichettypalayam, Erode District v. Senniappan and others). In both the cases, the contention that use of rig mounted on the lorry was not amounting to use of the lorry as a motor vehicle and hence, insurer was not liable to indemnify any liability arising out of such use of the vehicle was negatived and order of Workmen's Compensation Commissioner was confirmed. Further, in view of the valid insurance coverage for eight employees, the denial of the insurer of their liability is liable to be negatived. The Commissioner for Workmen Compensation has rightly negatived such contention and awarded compensation in favour of the injured-claimants.

7.The substantial questions of law 1 to 3 and additional substantial question of law No.2 are arising out of factual findings

with regard to employer and employee relationship and the occurrence of the accident in the course of such employment and the quantum of monthly salary of the employees and personal insurance coverage for such employees under the policies. As the factual findings are based on sufficient materials and supported by proper reasoning, no question of law arises against the same. As there is no other ground made out to question either the correctness or the quantum of compensation, the appellant-insurer is disentitled to get any relief in these appeals.

8. In the result, both the appeals stand dismissed with liberty given to the claimants to withdraw the entire award amount by filing due application before the Commissioner for Workmen's Compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Workmen Commissioner,
Deputy Commissioner of Labour,
Salem.

2. The Record Keeper,
V.R. Section,
High Court, Chennai.

1 CC to Mr. MA. P. Thangavel, Advocate SR.No. 48375

1 CC to Mr. T. Ravichandran, Advocate SR.No. 48256

+1 cc to M/s. MA. P. Thangavel, Advocate (sr. 48374) 28/10/2015

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JSV (CO)

PSI (05.10.2015)

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