

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on 14.11.2016)

DATED : 29.11.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.3783 of 2012

and

M.P.No.1 of 2012

The Oriental Insurance Company Ltd.,
Motor Third Party Cell,
2nd Floor, Broadway,
Chennai - 600 001. ... Appellant/2nd Opposite Party

... Vs ...

1. Rajamani
2. Gnanavalli ... Respondents 1 & 2/Applicants
3. A.Sankar ... 3rd Respondent/1st Opposite Party

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 26.07.2012 passed in W.C.No.16 of 2010, on the file of the Commissioner for Workmen's Compensation-2 (Office of the Deputy Commissioner of Labour-2, Chennai - 6.

For Appellant : Mr.R.Sivakumar
For RR-1 & 2 : Mr.P.Senthilkumar
For R-3 : Served

JUDGMENT

Aggrieved against the order dated 26.07.2012 passed by the learned Commissioner for Workmen's Compensation-2 (Deputy Commissioner of Labour-2), Teynampet, Chennai - 6, in W.C.No.16 of 2010, the insurance company had preferred this appeal before this Court.

2. The learned counsel for the appellant/insurance company would mainly contend that the Commissioner for Workmen's Compensation-2/Deputy Commissioner of Labour-2, Chennai - 6, without application of mind, erroneously passed order directing the appellant herein to pay a sum of Rs.4,50,500/- to the claimants/respondents 1 and 2 towards compensation. It is further contended that the Commissioner for Workmen's Compensation-2 ought to have directed the third respondent herein to pay the entire compensation amount to the claimants and dismissed the claim petition as against the appellant herein. The Commissioner for Workmen's Compensation-

2 failed to note that the respondents 1 and 2 herein have not proved the fact that the deceased died during the course of his employment as a Load man under the third respondent herein. It is also contended that the Commissioner for Workmen's Compensation-2 is erred to note that the Tractor bearing Registration No.TN-32-D-9283 is meant for agricultural purpose only. Further, the Commissioner for Workmen's Compensation-2, erred to note that the policy issued in favour of the third respondent herein for the alleged Tractor covers only the driver. In spite of that, the Commissioner for Workmen's Compensation-2, erroneously directed the appellant herein to pay the compensation to the claimants. It is also contended that the Commissioner for Workmen's Compensation-2 erred to note that at the time of accident, there were four unauthorised passengers, including the deceased Kumaresan, travelled in the alleged Tractor bearing Registration No.TN-32-D-9283. Hence, the Commissioner for Workmen's Compensation-2 ought to have dismissed the claim petition as against the insurance company, but erroneously allowed the petition. Hence, the learned counsel for the appellant prayed that the order passed by the Commissioner for Workmen's Compensation 2, Chennai, has to be set aside and the civil miscellaneous appeal has to be allowed.

3. The learned counsel appearing for the respondents 1 and 2/claimants would contend that the Commissioner for Workmen's Compensation-2, after considering the entire facts and circumstances of the case, correctly came to a conclusion and directed the appellant/insurance company to pay the compensation to the claimants. There is no illegality or infirmity in the order passed by the Commissioner for Workmen's Compensation-2, and therefore, the learned counsel prayed that the order passed by the Commissioner has to be confirmed and the civil miscellaneous appeal has to be dismissed.

4. Even though notice was served on the third respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

5. This Court considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for respondents 1 and 2 and perused the records.

6. In this case, it is admitted by the learned counsel for the appellant that during the time of accident, the policy is in existence for the alleged Tractor bearing Registration No.TN-32-D-9283. The copy of the policy was marked as Ex.A.5. Further, it is admitted by the learned counsel for the appellant that the deceased Kumaresan was travelled in the alleged Tractor during the time of accident. Admittedly, the policy covers two persons including the driver. The claimants are the parents of the deceased Kumaresan. It is also admitted on the side of the appellant that they have failed to

produce the terms and conditions annexed to the policy. On the side of the claimant alone, they have produced the copy of the policy which is marked as Ex.A.5. On the side of the appellant, they have produced Ex.R.1-Authorisation letter and Ex.R.2-investigation report. Other than the above two documents, there is no document produced showing the terms and conditions annexed to the policy.

7. On reading of the policy, it is seen that it covers two persons including the driver. In this case, it is also not denied on the side of the appellant that other than the present claim petition, nobody have filed any petition claiming damages from the owner of the vehicle or from the insurance company. In view of this, this Court is of the considered view that the policy covers two persons including the driver. On the side of the appellant, they have not produced any document to show that there is a violation of the terms and conditions of the policy by the deceased. The quantum of compensation awarded by the learned Commissioner for Workmen's Compensation-2 is just and reasonable. Therefore, there is no infirmity or illegality in the order passed by the Commissioner for Workmen's Compensation-2, Chennai. This Court finds no reason to interfere with the order passed by the Commissioner for Workmen's Compensation-2, Chennai, which do not warrant any interference by this Court and hence, the civil miscellaneous appeal deserves to be dismissed.

8. In the result, the civil miscellaneous appeal is dismissed by confirming the order passed by the learned Commissioner for Workmen's Compensation-2 (Deputy Commissioner of Labour-2), Teynampet, Chennai - 6, in W.C.No.16 of 2010. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jrl

To

The Commissioner for Workmen's Compensation-2,
Deputy Commissioner of Labour-2,
Teynampet, Chennai - 6.

+ 1 cc to Mr.R. Sivakaumar, Advocate Sr.69833

C.M.A.No.3783 of 2012

SK(CO)

EU 03.01.17

<https://hcservices.ecourts.gov.in/hcservices/>