BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)Nos.1278 and 1279 of 2011
and
M.P.(MD) Nos.1 and 1 of 2011

The Divisional Manager,
M/S. United India
Insurance Company Limited,
Divisional Office,
91 - Kamarajar Salai,
Madurai - 625 009. .. Appellant in both CMAs

-Vs-

1.R.Murugan
2.V.Chellam .. Respondents in CMA(MD)No.1278 of 2011

1.Raja
2.V.Chellam.. Respondents in CMA(MD)No.1279 of 2011

Common Prayer:- Civil Miscellaneous Appeals filed 30 of the Workmen's Compensation Act, 1923, against the order passed in WC.Nos.288 and 115 of 2008 dated 19/05/2011 on the file of the Deputy Commissioner for Workmen's Compensation, Madurai.

For Appellant : Mr.C.Jawahar Ravindran
for both CMAs
For Respondents : Mr.A.Theethar (for R1)
for both CMAs

COMMON JUDGMENT

It is the case of injury and the victims filed applications before the Deputy Commissioner of Labour under the Workmen Compensation Act and the competent authority under the Workmen Compensation Act considered the facts and circumstances of the case and awarded Rs.20,332/- and Rs.1,87,878/- respectively towards the total compensation to the victims.

2.The appellant/United India Insurance Company preferred the present appeals on the ground that the ownership of the vehicle, which met with an accident, was transferred in favour of the third party and the change of name was effected in the R.C Book. But the name of the new owner was not changed in the insurance policy in force with the appellant/Insurance Company.

3. On reading of Section 157 of the Motor Vehicles Act, it is unambiguous that the change of ownership is to be construed a deemed change of the insurance policy also. Hence, the insurance policy is deemed to have been changed along with the change of ownership before the motor vehicle registering authority. But the learned counsel appearing for the appellant contended that it is the case under the Workmen Compensation Act and there is no such provision available under the Workmen Compensation Act in respect of the deemed transfer of insurance policy.

4.This Court is of the view that under Section 157(1) of the Motor Vehicles Act, it is clear that the deemed transfer is to be adopted in respect of the change of ownership as far as insurance policy is concerned. Since the Motor Vehicles Act itself is a welfare legislation, it cannot be interpreted against the interest of the victims, who suffered physical and mental agony. The Hon'ble Supreme Court of India in the case reported in **2014(2) TN MAC 729** (Mallamma (dead) vs. National Insurance Company) held as follows:-

> 5. After hearing parties and perusing the documents brought on record, the Commissioner came to the conclusion that the deceased was employed with Jeeva Rathna Setty, hence there is an employee-employer relationship between the deceased and the Respondent No. 1 and the deceased had died during the course of his employment. At the time of accident, the age of the deceased was determined as 25 years with a monthly earning capacity of Rs.2,000/- p.m. and thereby the Commissioner fixed compensation at Rs.2,16,910/-. As the Insurance Company did not deposit the amount, the Commissioner awarded an interest @ 12% p.a. from 3rd April 1997 till the date on which he passed the order, i.e. 14th February, 2003, which amounted to Rs.1,50,265/- and ordered that the appellants are entitled to receive a total compensation of Rs.3,67,275/- from the employer Jeeva Ratna Setty and the Insurance Company. Finally, by the Award dated 28th February, 2003, the Commissioner held that though the insurance policy was in the name of Gangadhara, the ownership of the vehicle on the date of accident was with the Jeevaratna Setty; it is proved that during the validity period of the said insurance policy, the said vehicle was transferred from Gangadhara to Jeevaratna Setty; as per Section 157(1) of the Motor Vehicles Act, 1968 whenever a vehicle is transferred from one person to another, the benefits of the insurance policy shall also be transferred to the new

owner; accordingly instant policy benefits will also be automatically transferred from Gangadhara to Jeevaratna Setty. Therefore, the National Insurance Company shall be liable to pay the compensation and interest thereupon to the claimants. Accordingly, the Commissioner fixed the liability of paying compensation on the Insurance Company and Jeeva Ratna Setty individually and severally and directed them to deposit the amount within a period of 30 days from the date of the Award failing which they shall further be liable to pay interest @ 9% p.a. for the delayed period. The Commissioner, however, discharged Gangadhara (Respondent No. 3) and Laxmana Bhovi, (Respondent No. 4) from the case.

7. The High Court, by the impugned order, affirmed the findings of the Commissioner that (i) the deceased workman was actually employed with Jeeva Rathna Shetty, and therefore, there is a relation of employee- employer between them; (ii) the deceased workman having died as a result of an accident arising out of and in the course of employment, hence the claimants as legal representatives of the deceased are entitled to recover compensation, (iii) there was a valid insurance policy in force on the date of accident (iv) and the original owner of the tractor was Gangadhara. However, the High Court excluded the liability of the Insurance Company on the ground that the contention of deemed transfer of the insurance policy in favour of Jeeva Rathna Setty by virtue of Section 157 of M.V. Act was not actually urged before the Commissioner.

10. Before us, learned counsel for the appellants relying upon Section 157 of the M.V. Act, contended that there is an admitted transfer of ownership of the vehicle as proved before the Commissioner. Once the ownership of the vehicle is admittedly proved to have been transferred to Jeeva Rathna Setty, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required under Section 103 of the M.V. Act is not given to the insurer, hence the impugned order passed by the High Court is contrary to law. In support of this contention, learned counsel for the appellant has relied upon a judgment of this Court in G. Govindan Vs. New India Assurance Co. Ltd. (1999) 3 SCC 754.

11. Learned counsel has also brought to our notice a relevant portion from the 'Schedule of Premium' of the insurance policy, a copy of which is available on record as Annexure P-1., which reads thus:

B.	LIABILITY TO PUBLIC RISK	Rs. 120-00	
	Liability to Trailor	Rs. 87-00	
Add:	for L.L. to persons employed in Connection with the operation and/ or loading of vehicle (IMT 19)	Rs. 15-00	
Add:	for increased third party property damage limits. Section II-I(ii) upto Rs. Unltd. IMT 70	Rs. 75-00	
	TOTAL PREMIUM (A +B)	Rs. 1318-00	

12. On the other hand, learned counsel for the National Insurance Company, mainly contended that unless it is proved by evidence that the vehicle has been transferred in the name of Jeeva Rathna Setty, the deeming provision of Section 157 of the M.V. Act would not be applicable. In the absence of such evidence on record the High Court has rightly absolved the Insurance Company from the liability and the order passed by the High Court does not require any interference from this Court.

13. The counsel for the Insurance Company of course contended that as per their records, on the date of accident, the vehicle was registered in the name of Gangadhara. Hence in the absence of a valid proof that the ownership of the vehicle has been transferred in the name of Jeeva Ratna Setty, the benefits of insurance policy cannot be given to Jeeva Ratna Setty. However, the said contention is contrary to record. A specific finding by the Commissioner to this effect in his order dated 28th February, 2003 reads thus:

> "The 4th respondent had stated that on the date of the accident, this vehicle was in the name of Sh. Gangadhara. But the applicants have proved the said statement as false through documents and on the date of the accident, the vehicle was in the name of the Respondent No.1."

14. In view of the above finding, it can be discerned that on the date of accident, the ownership of the tractor stood transferred from Gangadhara to Jeeva Ratna Setty. In

addition to that, a perusal of the 'Schedule of Premium' extracted above shows that an amount of Rs.15-00 has been paid as premium "for L.L. to persons employed in connection with the operation and/or loading of vehicle (IMT 19)".

15. In view of the above discussion we are of the considered view that as on the date of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157 (1) of the M.V. Act."

5.In view of the above-said Judgment, this Court is not inclined to consider these appeals filed by the Insurance Company and accordingly, the awards passed by the Deputy Commissioner for Workmen Compensation, Madurai in WC.Nos.288 and 115 of 2008 dated 19/05/2011 are confirmed and these Civil Miscellaneous Appeals are dismissed. The learned counsel for the appellant/Insurance Company informed that the entire award amount has already been deposited before the Tribunal. The claimants are permitted to withdraw entire award amount with accrued interest and costs by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

/True Copy/

Sub Assistant Registrar

To
The Deputy Commissioner for Workmen's Compensation
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2ccs to Mr.C.Jawahar Ravindran,Advocate,SR.Nos.68289&68290

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SKN
KK-RR-24.03.2017-5p-5c