NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 187 OF 2006

Oriental Insurance Company Limited, through its Branch Office, Main Road, Sadar Bazar, Jagdalpur, District Bastar (C.G.)

… Appellant

Versus

1. Ramlal, S/o Sukuldhar, aged 26 years, Raut by caste, R/o Hitameta, Rautpara, Barsur, District Dantewada (C.G.)
2. Sonaram, S/o Jagannath, R/o Balpeth, P.S. Dantewada, presently residing at Bus Stand, Barsur, District Dantewada (C.G.)
3. Rajkumar Nainwani, S/o Kanhaiyalal Nainwani, R/o Bodhghat Colony, Jagdalpur, District Bastar (C.G.)

… Respondents

For Appellant	:	Mr. Ghanshyam Patel, Advocate.
For Respondent No.1	:	Mr. Keshav Dewangan, Amicus Curiae.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/08/2017

1. The present is an appeal under Section 30 of the Workmen's Compensation Act, 1923. Challenge in the present appeal is to the award dated 20.9.2004 passed by the Commissioner for Workmen's Compensation, Labour Court, Jagdalpur, in Case No. COC/B/10/W.C.Non Fatal/1/04.

2. Vide the said impugned award, the Commissioner in an injury case has awarded a compensation of Rs.1,04,626/- with interest thereon at the rate of 9% per annum to the claimant/respondent no.1.

3. As per the claimant/respondent no.1, he was engaged by respondent No.2 for loading purposes in the tractor-trolley, bearing Registration No. CG17-ZG/0371 & 0372 and that when the claimant had gone for loading of earth and after loading when he was boarding on the tractor-trolley, the driver of the tractor moved the tractor as a result of which he fell from the vehicle and received grievous injuries. A criminal case was also registered vide Crime No.23/2003 at Police Station Barsur, District Dantewada and put to trial before the Judicial Magistrate First Class, Jagdalpur. The claimant had filed a claim case under the provisions of the Workmen's Compensation Act for the disability that he had sustained as a result of the injuries because of the said accident.

4. The Commissioner for Workmen's Compensation Act, after completion of the pleadings and recording of the evidence, vide the impugned award, allowed the claim case and ordered for payment of Rs.1,04,626/- with interest at the rate of 9% per annum in favour of the claimant. While granting the compensation, the Commissioner has fastened the responsibility of payment of compensation upon the Insurance Company which had insured the said tractor-trolley. While passing the award, the Commissioner also held that under the provisions of the Workmen's Compensation Act the Court would not be in a position to decide the *inter se* dispute between the insured and the insurer.

5. It is this award which has been questioned by the Insurance Company by way of the present appeal.

6. The present appeal was admitted on 21.2.2006 where the following question of law was framed:

> **“**Whether the learned Commissioner, Workmen's Compensation has erroneously held that the plea of breach of policy condition is a dispute between the insured and the insurance company and it cannot be decided by the Commissioner, Workmen's Compensation?**”**

7. Subsequently, on 21.1.2014 another question of law was framed by this Court, which reads as under:

> **“**Whether the learned Commissioner, Employee's Compensation is justified in fastening the liability to indemnify the amount of compensation upon the appellant in facts of the case?**”**

8. The contention of Shri Ghanshyam Patel, learned Counsel appearing for the Insurance Company, is that the accident in the present case arose when the claimant is said to have been boarding the tractor-trolley after filling the same with earth. Further contention of the Insurance Company is that there is no evidence to show that the claimant was an employee of the respondent-insured. The Insurance Company categorically denied the employment of the injured under Respondent No.3 and therefore the fastening the liability was erroneous. It was also the contention of the Insurance Company that the owner, i.e., Respondent No.3 in the appeal has also filed his reply before the Court below and has categorically stated that the injured person was not employed by him and thus in the absence of there being evidence of employer-employee relationship established before the Court below, the question of granting compensation and fastening of liability upon the Insurance Company is bad in law and erroneous and deserves to be set aside. It was further contended by the Insurance Company that the policy which has been issued by the Insurance Company covering the tractor was a Kissan Package Policy and the said policy does not cover the risk under the Workmen's Compensation Act. It also does not cover the risk of a person apart from the driver of the tractor so as to fasten the liability upon the Insurance Company. It was next contended by the Insurance Company that since the policy stands issued under the provisions of Section 147 of the Motor Vehicles Act, 1988, the liability if any would also be strictly within the provisions of the Motor Vehicles Act alone and it cannot be fastened with the liability incurred under the provisions of the Workmen's Compensation Act. Further contention of the Insurance Company is that the statement of the witnesses deposed on behalf of the claimant would show that the injured was in fact employed by one Kamru Seth and, therefore, since there is a dispute as to who the actual employer is, also ought to have been answered by the Commissioner before fastening the liability upon the Insurance Company.

9. Shri Keshav Dewangan, learned Amicus Curiae, engaged by this Court on behalf of the claimant, opposing the appeal submits that it is a case which has to be construed under the provisions of the Workmen's Compensation Act. Section 3 of the said Act defines the accident, which says that the liability of payment of compensation would arise in the event of an accident "arising out of and in the course of employment". Shri Dewangan, learned Amicus, further submits that the case of the claimant and the undisputed facts which have come on record show that the accident arose in the course of employment of the injured Ramlal irrespective of the employer whether it be the Respondent No.3-Rajkumar Nainwani or the said Kamru as has been claimed by the Insurance Company. Undisputedly the accident arose in the course of and arising out of the employment as he was boarding the tractor after filling it with earth for which he was engaged when the accident occurred, fully attracting the provisions of Section 3. In the said factual background, the liability for payment of compensation would definitely fall upon the vehicle which was involved in the accident resulting in the injury sustained by the claimant.

10. What also cannot be brushed aside is the fact that the vehicle was insured under the Kissan Package Policy. Under the Kissan Package Policy, sub-section (II) of Section XV deals with the liability to third parties. For ready reference, the provisions under Clause (1)(i) of sub-section (II) and the proviso (c) of the said sub-section is reproduced herein under:

> **"Sub-Section II – Liability to Third Parties**
> (1) xxx xxx xx
> (i) death or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the agriculture tractor.
> xxx xxx xx
> xxx xxx xx
> c) Except so far as is necessary to meet the requirements of the Motor Vehicles Act in relation to the liability under the Workmen's Compensation Act 1923 the Company shall not be liable in respect of death of or bodily injury to any person

> (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the tractor at the time of occurrence of the event out of which any claim arises.**”**

11. A plain reading of the aforesaid provisions would clearly make it clear that the liability of a claim arising out of the use of the vehicle is more important for coverage of the policy issued by the Insurance Company. It would also include a claim which has been raised under the provisions of the Workmen's Compensation Act, as is evident from the reading of the proviso (c) of sub-section II of Section XV of the Kissan Package Policy.

12. So far as the finding of the Commissioner that the *inter se* dispute between the insurer and the insured cannot be decided, what is relevant to be taken note of, is the nature of claim which has been raised. In the instant case, the dispute perhaps which has been raised and for which question of law framed is also the issue of breach of policy conditions. The breach of policy conditions has to be pleaded and established by the Insurance Company as, it is they, who had raised the ground of breach of policy conditions. From the evidence which have come on record more particularly on going through the terms and conditions of the Kissan Package Policy, the relevant provisions of which have been reproduced in the preceding paragraph, clearly reflect that there is no breach of policy conditions as such. Even if the argument of the Insurance Company has to be taken into consideration as to whether the dispute pertaining to the policy covering the risk under the Workmen's Compensation Act, the perusal of the aforesaid terms and conditions of the Kissan Package Policy would answer the issue, as it also covers the liability which arose under the provisions of the Workmen's Compensation Act if the accident is in the course of the use of the tractor.

13. So far as the first substantial question of law which has been framed by this Court as to whether the learned Commissioner, Workmen's Compensation has erroneously held that the plea of breach of policy condition is a dispute between the insured and the insurance company and it cannot be decided by the Commissioner, Workmen's Compensation, in the opinion of this Court, even if that issue has been erroneously decided by the Commissioner the same would not have any adverse bearing to the other findings arrived at by the Commissioner insofar as the liability fastened upon the Insurance Company is concerned or as regards the entitlement of the claimants are concerned.

14. As far as the second substantial question of law is concerned, the same is answered in the affirmative holding that the Commissioner was justified in fastening the liability upon the Insurance Company.

15. The appeal stands dismissed accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/