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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 105 of 2009

The Oriental Insurance Company Limited, Divisional Office, P.B.-51, Malviya Nagar, Durg, Chhattisgarh

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Versus

1. Krishna Kumar Dewangan, S/o. Late Shri Ramgulam Dewangan, Aged about 36 years, R/o. Pacharipara, Durg, Ward No. 29, Tahsil & District Durg Chhattisgarh
2. Katyayani Traders, Pro. Ajay Gupta, S/o. Shri B.P. Gupta, R/o. Shivpara, Durg, District Durg Chhattisgarh

–--Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. Present is an appeal under Section 30 of the Workmen's Compensation Act, passed by the Commissioner for Workmen's Compensation, Labour Court, Durg, Chhattisgarh, in Case No. 103/W.C. Act/N.F./2005.

2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.43,096/-. The case of the Claimant was that he was engaged by the respondent No.2 on 08.11.2004 for going to Jagdalpur on the vehicle belonging to the respondent No.2 i.e. Mahindra Pick-up bearing registration No. CG-07-ZB-0459. While going to Jagdalpur at the instance of the respondent No.2, the vehicle met with an accident, in which the Claimant/ respondent No.1 received injuries for which he had filed a claim application, which stood allowed vide the impugned award under challenged.

3. Present is an appeal by the Insurance Company. The ground of challenge is that firstly the Claimant/ respondent No.1 was not a workmen of the respondent No.2. It was also contended that the policy issued was not covering the risk under the Workmen's Compensation Act. He further contended that the accident also did not arise out of and in the course of employment, so as to attract the provisions of Workmen's Compensation Act.

4. The appellant relied upon the statement/deposition of the witness examined on behalf of the Insurance Company establishing the fact that there was no direct employee-employer relationship. Further the injured was himself driving the vehicle at the time of accident and for this reason also prayed for setting aside of the award and for exonerating the Insurance Company of its liability.

5. Having considered the rival contentions put forth on either side and on perusal of record, undisputedly the accident in the instant case that took place on 08.11.2004 is not in dispute, the vehicle involved in the accident also not in dispute. As a result of the accident, the Claimant suffered injuries also stands established. Now the only issue is whether the Insurance Company can be held liable for payment of compensation or not.

6. So far as the claim application to be made applicable under the Workmen's Compensation Act, it is the ingredients required under Section 3 which has to be made out first. The foremost condition required for an application under the Workmen's Compensation Act is the accident to have arisen out of and in the course of employment.

7. The pleadings which have come on record show that the Owner of the offending vehicle had engaged the Claimant for going from Durg to Jagalpur en-route when the accident occurred. The fact that the Owner had sent the Claimant along with a regular Driver would by itself prove the fact that the Claimant in the instant case was also engaged at the time of accident by the respondent No.2-Katyayani Traders. Undisputedly, after performing duties, which were assigned while returning the accident had occurred. Thus, there is sufficient evidence on record to show that there was indirect engagement of the injured by the Owner.

8. So far as the policy issued not covering the risk under the Workmen's Compensation Act is concerned, this Court is of the opinion that under Section 167 of the Motor Vehicles Act, the Claimant had an option of approaching either under the provisions of Workmen's Compensation Act or under the provisions of Motor Vehicles Act.

9. Having opted for the provisions under Workmen's Compensation Act it cannot be found fault with nor can the application be held as not maintainable.

10. Further, all the grounds, which have been raised by the appellant/ Insurance Company are all findings of facts based on the evidence which have come on record. The appeal under Section 30 is only on a substantial question of law which could be raised. Once when the primary ingredient of the accident arisen out of and in the course of employment is established as has been held in the preceding paragraphs. Rest of the contentions put forth by the Insurance

Company would become findings of fact which cannot be interfered with under Section 30 of the Workmen's Compensation Act.

11. Lastly, this Court is also not inclined to interfere with the impugned award, considering the meagre amount which has been awarded by the Tribunal i.e. Rs.43,096/-. So far as the ground of no premium paid is concerned, it is not the case of the Claimant that he was engaged exclusively as a mechanic, but the fact he was engaged was for taking the vehicle to Jagdalpur. Thus, even if the premium has not been paid for covering the risk of a mechanic, he would definitely be covered by the policy which has been issued. The appeal of the Insurance Company thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved