IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.207 OF 2011
AND CONNECTED MISCELLANEOUS PETITIONS

M/s.United India Insurance Company Ltd.,
No.826, Anna Salai,
VII Floor, Tarapore Towers,
Chennai - 600 002. ... Appellant

Vs.

1.D.Padma

2.M/s.K.M.Leather Industries Pvt. Ltd.,
No.829/1, Periyar High Road,
Chennai - 600 010.

3.G.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award dated 09.09.2010 passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II) Chennai, in W.C.No.79 of 2008.

For Appellant : Mr.Michael Visuvasam
For Respondent-1 : Mr.U.M.Ravichandran

J U D G M E N T

Aggrieved over the quantum of compensation and liability to pay the same, the appellant / insurance company / third opposite party has preferred this Civil Miscellaneous Appeal against the order passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II) Chennai, in W.C.No.79 of 2008 dated 09.09.2010.

2. The deceased was working as a Driver under the second respondent. On 18.09.2007, while he was driving the vehicle, met with an accident and died on the way to the Hospital. The vehicle was insured with the appellant / insurance company for

the period between 23.03.2007 and 22.03.2008.

3. The appellant / insurance company has taken a stand that the vehicle was sold by the second respondent to the third respondent and the transfer is not informed to the appellant / insurance company. Therefore, there cannot be any employer / employee relationship between the third respondent and the deceased and since there is no contract between the third respondent and the appellant, the insurance policy will not cover the third respondent and his employees. The policy continues to be in the name of the second respondent and therefore, the appellant is not liable to pay any compensation. Further, the income of the deceased was also denied.

4. The authority under the Workmen's Compensation Act, 1923, relying on a judgment of this Court in C.M.A.No.426 of 1997 [A.MANICKAM VS. RAJU AND OTHERS] dated 28.06.2005 has held that the policy issued to the vehicle should run with the vehicle. In so far as the third party is concerned, it is the statutory obligation of the insurance company to pay the compensation as per the provisions of the Act. Finding so, the authority has awarded compensation.

5. The appellant / insurance company challenged the fastening of liability and contended that when there is no employer / employee relationship between the insured and the deceased, they are not liable to pay compensation. Further, when the transfer of ownership is not properly communicated to the insurance company, there is no contract between the employer and the insurance company and therefore also, they are not liable to pay compensation.

6. Heard the submissions made on either side and perused the materials available on record.

7. The contention of the insurance company is that once the vehicle is sold or transferred to a third party or to another person, until it is registered in the name of the purchaser, the insurance policy stands lapsed. The Hon'ble Supreme Court, in very many cases, has categorically held that the policy does not lapse just because the vehicle is sold to another person. The obligation to pay the compensation to the third party shall continue as held in FIRDAUS VS. ORIENTAL INSURANCE CO. LTD. [2017 (2) TN MAC 505 (SC)] and the relevant paragraph from the said judgment reads as under:

> "13......... The question arose in the above case, as to whether in absence of intimation of transfer to the Insurer the liability to pay the compensation to the third party shall cease. This Court held that even

if vehicle stand transferred to the name of another person, the liability of insurer to pay compensation to third party shall not cease. The relevant discussion on the issue is contained in paragraphs 3 to 7 of the judgment, which is quoted as below:

> "(3) This Court in G. Govindan v. New India Assurance Co. Ltd. and Ors. has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy. We are of the view that said decision concludes the controversy in the present appeal. However, we would like to give further reasons that the liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company. Chapter VIII of the Act has been enacted following several English statutes. In England, Prior to 1930, there was no law of compulsory insurance in respect of third party rights. Whenever an accident took place the victim or the injured used to take legal proceedings against an erring motorist for recovery of damages. But many a times, it was found that the owner of an offending vehicle was not always in a position to pay compensation or damages to the injured or to the dependants of the deceased and in that event the claimants could not get the damages. To meet such a situation, various legislations were enacted in England. For the first time, Third Parties (Rights Against Insurers) Act, 1930 was enacted, the provisions

of which find place in Section 97 of the Act which gave to third party right to sue directly against the insurer. Subsequently, the Road Traffic Act, 1930 was enacted which provided for compulsory insurance of motor vehicles. The provisions of the said Act was engrafted in Section 95 of the Act. Under Section 38 of English Act, 1930, certain conditions of insurance policy were made ineffective so far as the third parties were concerned. The object behind the aforesaid legislation was that third party right should not suffer on account of failure to comply with those terms of the insurance policy. Section 94 of the Act gives protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place and, therefore, the insurance of vehicle had been made compulsory under Section 94read with Section 95 of the Act.

4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risk, i.e. owner of the vehicle; property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

"95. (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in

> the case of that person or those classes of person.”
>
> 5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.
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> 6. On an analysis of Section 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.
>
> 7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

8.The above judgment squarely applies to the case on hand. Therefore, the contentions of the appellant / insurance company are not sustainable and the obligation to pay compensation to third party continues even though the vehicle is sold and it was not registered or the policy was transferred in the name of the purchaser. The Civil Miscellaneous Appeal merits no consideration and accordingly stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS v)

//True copy//

Sub Assistant Registrar

TK

To

The Commissioner for Employees' Compensation
(Deputy Commissioner of Labour - II)
Chennai.

+2cc to Mr.Ravichandran, Advocate SR.No.77826
+1cc to Mr.Micheal Visuvasam, Advocate SR.No.77739

C.M.A.NO.207 OF 2011

MG(CO)
GN(14/03/2018)