

Reserved on : 17.11.2017

Delivered on : 22.11.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.559 of 2015 and  
M.P.No.1 of 2015

The Divisional Manager,  
United India Insurance Co. Ltd.,  
Puducherry.

... Appellant

Vs.

1.Kalaivani  
2.Minor Ragavi  
3.Minor Rakshatha  
(Minor applicants are represented by their  
next friend/natural guardian Kalaivani)  
4.Visalatchi  
5.Iyyanar

... Respondents

Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award and decree dated 25.11.2014 made in W.C.A.No.7 of 2011 on the file of the Commissioner, Additional Commissioner for Employees' Compensation, Puducherry.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.R.Thiagarajan (R1)

(minors R2 & R3 rep by R1 - caveator)

J U D G M E N T

Challenging the order passed in W.C.A.No.7 of 2011 on the file of the Additional Commissioner for Employees' Compensation, Puducherry, the 2<sup>nd</sup> Opposite Party/Insurance Company has filed the above appeal.

2.The brief case of the claimants/respondents 1 to 4 is as follows:

(i)The claimants/respondents 1 to 4 filed W.C.A.No.7 of 2011, claiming a compensation of Rs.21,50,000/- with interest at the rate of 12% per annum for the death of one Ramalingam, who

is the husband of the 1<sup>st</sup> respondent, father of the respondents 2 & 3 and son of the 4<sup>th</sup> respondent. The 5<sup>th</sup> respondent is the owner of the vehicle.

(ii)According to the claimants, on 25.06.2011, at about 04.30 pm, the deceased Ramalingam, along with one Shanmugam and Marimuthu was loading the sugarcane reeds in the Tractor bearing Registration No.TN 25 Y 4167 belonging to the 5<sup>th</sup> respondent at Sivaranthagam and Pangoor Road Junction. The deceased Ramalingam was in the Trailer tightening the reeds. He lost his balance and fell down from the vehicle and sustained head injuries. Immediately, the said Ramalingam was admitted at Sri Venkateswara Medical College and Research Centre at Ariyalur by the co-workers. However, the said Ramalingam succumbed to the injuries on 25.06.2011 at about 05.00 pm.

(iii)According to the claimants, the death of Ramalingam in the accident was in the course of his employment. According to the claimants, Ramalingam was working as an agricultural labourer and was earning daily wages of Rs.400/-. He is the sole bread-winner of the family. The 1<sup>st</sup> respondent was aged 30 years at the time of the accident. The respondents 2 & 3 were minors at that time. The deceased was giving good care and protection to the family in all means. The claimants claimed a sum of Rs.16,32,000/- towards loss of income and dependency; Rs.1,00,000/- towards pain and suffering and mental agony; Rs.1,50,000/- towards loss of consortium; Rs.1,50,000/- towards loss of love and affection; Rs.1,00,000/- towards loss of estate and Rs.18,000/- towards funeral expenses, in all, the claimants claimed a total sum of Rs.21,50,000/- as compensation. According to the claimants, the vehicle belonging to the 5<sup>th</sup> respondent was insured with the appellant/Insurance Company.

3.The 5<sup>th</sup> respondent filed his counter. Subsequently, he remained exparte.

4.The brief case of the appellant/Insurance Company is as follows:

According to the appellant, the deceased Ramalingam fell down from the Trailer on his own because of his own negligence and sustained injuries and died due to the said injuries. The vehicle bearing Registration No.TN 25 Y 4167 was not involved in the accident. The driver and the police officials have connived together for raising the false claim. The Insurance Policy purported to be issued in respect of the Tractor bearing Registration No.TN 25 Y 4167 does not cover any workmen and the owner has not paid any premium towards covering injury or death of any other person other than the driver of the said Tractor and another employee for the maintenance of the Tractor. The seating capacity of the Tractor is only one as per the

Registration Certificate and there is no scope or provision for any other person to travel in the Tractor. The Trailer was not insured with the Insurance Company and there is no provision for a loadman in a Tractor to claim compensation. The Insurance Company is not liable to pay any compensation to the claimants and only the 5<sup>th</sup> respondent is liable. The alleged accident had occurred when the Tractor was not in use and the Tractor was not in motion and hence, as per the policy conditions, liability cannot be cast upon the Insurance Company to indemnify the owner of the Tractor for the death of Ramalingam. In these circumstances, the appellant prayed for dismissal of the petition.

5. Before the Additional Commissioner, on the side of the claimants, 2 witnesses were examined and 12 documents, Exs.P1 to P12 were examined. On the side of the appellant, 4 witnesses were examined. However, no document was marked. Though the 5<sup>th</sup> respondent, the owner of the Tractor, was set exparte, he was examined as R.W.3.

6. The appellant has raised the following substantial questions of law in the appeal:

- i. Whether the Deputy Commissioner of Labour was correct in holding that the appellant is liable inspite of the fact the policy does not cover the said risk?
- ii. Whether the Deputy Commissioner of Labour was correct in holding that the appellant is liable to pay compensation for the death occurring outside the purview of Sec.3(1)?
- iii. Whether the Deputy Commissioner of Labour was correct in applying S.147(1)(b)(i) of the M.V. Act when admittedly the Trailer was not insured with the appellant?

7. The Additional Commissioner, taking into consideration the oral and documentary evidences let in by the parties, rightly came to the conclusion that the deceased Ramalingam was an agricultural Coolie and is a Workman under the definition of the Act. Though the 5<sup>th</sup> respondent remained exparte before the Additional Commissioner, the appellant examined him as R.W.3 on their side. R.W.3, in his evidence, has stated that the Tractor was not in his possession on the date of the accident and the same was seized by one Finance Company from Theni. However, R.W.3 has not stated who seized the vehicle. However, Ex.P2 Insurance Policy stood in the name of the 5<sup>th</sup> respondent. R.W.3 was not in a position to explain why the policy stood in his name, when the vehicle was not in his possession. Therefore, the Tribunal disbelieved the evidence of R.W.3 and came to the conclusion that the deceased was a Workman and he was working

under the 5<sup>th</sup> respondent at the time of the accident.

8.Mr.S.Arun Kumar, learned counsel appearing for the appellant/ Insurance Company submitted that the Insurance Policy does not cover the loadman, therefore, the appellant/Insurance Company is not liable to pay the compensation to the claimants. Further, the learned counsel submitted that the Trailer was not insured with the Insurance Company, therefore, the appellant is not liable to pay any compensation.

8.1.In support of his contentions, the learned counsel for the appellant/Insurance Company relied upon the following judgments:

(i)I (2002) ACC 299 (SC) [New India Assurance Co. Ltd., Vs. C.M. Jaya & Ors.] wherein the Apex Court held as follows:

"...

7. On a careful reading and analysis of the decision in Amrit Lal Sood (supra), it is clear that the view taken by the Court is no different. In this decision also, the case of Jugal Kishore is referred to. It is held (i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy; (ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and (iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer. Hence, the Court after noticing the relevant clauses in the policy, on facts found that under Section II-1(a) of the policy, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously traveling in it. Further, referring to the case of Pushpabai Purshottam Udeshi (supra), it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement under Section 95 of the Act. As such, that decision had no bearing on Amrit Lal Sood's case as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Amrit Lal Sood's case as to unlimited or higher liability.

The Court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying down that even though the liability of the insurance company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to re-writing the statute or the contract of insurance which is not permissible."

(ii) 2003 (3) CTC 380 [Ramashray Singh Vs. New India Assurance Co. Ltd., and others] wherein the Apex Court held as follows:

"....

13. The appellant's next submission was that the concerned employee was a 'conductor'. It is doubtful whether a 'Khalasi' and a conductor are the same. But assuming this were so, there is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor."

9. Countering the submissions made by the learned counsel for the appellant/Insurance Company, Mr. R. Thiagarajan, learned counsel appearing for the respondents 1 to 4/claimants submitted that this Court had repeatedly held that an agricultural Coolie, operating with the agricultural produce in the Trailer, is entitled to claim compensation from the Insurance Company. Further, the learned counsel submitted that even if no premium is paid to cover a cleaner in the policy, the loading and unloading in the agricultural field by Tractor is a part of agricultural work, the cleaner is also entitled for compensation. That apart, the learned counsel also submitted that the present appeal has been filed by the appellant/Insurance Company without depositing the entire award amount (i.e.) the Insurance Company had deposited only the award

amount and not the accrued interest, which is a mandatory requirement under Sections 30 and 30 (1)(a) of the Workmen's Compensation Act, 1923, therefore, the appeal is liable to be rejected on that ground also.

9.1. In support of his contentions, the learned counsel relied upon the following judgments:

(i) 2011 (2) TN MAC 48 (DB) (Ker.) [New India Assurance Co. Ltd. Vs. Biju] wherein the Division Bench of Kerala High Court held as follows:

"...

6. For the sake of convenience the relevant clauses of Section 30, and in particular, the Third Proviso are extracted hereunder:

"30. Appeals—(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely—

(a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or of disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under Section 4-A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provision of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

... ..  
... ..  
... ..  
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Provided further that, no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against, (emphasis supplied)

(2) ... ..

(3) ... .."

...

31. In any view of the matter, we have no hesitation to hold that the contention raised by the Appellant that he need deposit only the principal amount of compensation cannot be accepted at all. The appellant has to deposit the principal amount of compensation as well as interest that has been ordered to be paid by the Commissioner.

(ii)2011 ACJ 2054 [Mounesh Vs. Thimmanna and another] wherein the Division Bench of Karnataka High Court held as follows:

"...

4. On close reading of the notification the trailers at item No.(vi) are categorised as transport vehicles. The trailer is not an automobile, unless it is attached to a tractor or any other automobile vehicle. The tractor at item(x) in column No.2 is categorised as a non-transport vehicle. At item No. (xi) of column No.2 trailers to carry personal effects are also categorised as non-transport vehicles. The tractor with a trailer used for transportation of agricultural produce and other goods would be very much a goods vehicle. Besides, such a tractor and trailer would be a goods carriage within the meaning of Section 2 (14) of the Motor Vehicles Act, in which event the risk of workmen/loaders of the tractor-trailer is necessarily to be covered under Section 147 as an Act Policy without collecting any additional premium. In that view of the matter, the insurer in this case would be liable to pay the entire compensation in terms of the Workmen's Compensation Act."

(iii)2013 (2) TN MAC 620 [New India Assurance Co. Ltd., through its Branch Manager, No.480, Chekkalai Road, Karaikudi, Sivagangai District Vs. P.Vinayagasundaram (died) and others] wherein this Court held as follows:

"...

7. It is no doubt true that at the time of death, the deceased was working as a loadman and he was 18 years. The Evidence of P.W.2-Kannan, who was also working as a loadman along with deceased in that tractor, categorically stated that the driver of the

tractor was responsible person for the accident, since the driver without taking care whether anybody was standing behind the tractor, used the hydraulic for lifting the trailer attached to the tractor to offload the sand and only in that process, the deceased was covered by the sand. In Ex.P2- Post-mortem certificate relating to the deceased, it is categorically stated that the deceased appeared to have died due to asphyxia and injury to vital organ lungs and thereby, it is clear that the deceased died only because he was covered by the sand came down from the trailer at the time of accident. Therefore, from the above, it is clear that the Insurance Company is liable to pay the compensation.

...

9. Another contention of the Insurance Company that the deceased was working only as a cleaner in the tractor at the time of accident and no premium was paid to the cleaner under the policy of the above vehicle, hence, the Insurance Company is not entitled to pay any compensation to the deceased family does not carry any merit, for the reason that when the tractor was used for unloading the sand in the land belonging to the owner of the vehicle, it has to be construed that loading and unloading in the agricultural field by the tractor has to be a part of the agricultural work, more particularly, in the present case, since PW2-Kannan also stated that when the sand was unloaded in the Ulaganathan's field, the accident had occurred killing the victim, since he was covered by the sand."

(iv)2014 (1) TN MAC 436 [New India Assurance Co. Ltd., Vellore Vs. Raman and others] wherein this Court held as follows:  
"

...

6. In a judgment reported in 2010 (1) TN MAC 296 [New India Assurance Co. Ltd. vs. Palani M.Samundeeswari] rendered by me, I have followed the decision of the Hon'ble Supreme Court and other High Courts and held that if the trailer is attached to the tractor, the policy will cover coolie also and if any coolie travels in the tractor sustains injuries, then the policy would cover them also. In the said case, the deceased travelling in the tractor by sitting on the mudguard. Following is the operative portion of the judgment.

9. Bearing in mind the decision of this Court and other High Courts and following principles laid down in the Apex Court decision, it is held that

since the deceased was travelling by the Tractor, even though, he was sitting in the mudguard, for the personal injuries received by him, the Insurance Company has to be held liable. To support this view of this Court, takes aid of the oral account of the R.W.1 also who is a Junior Assistant in Insurance Company who says in his cross-examination that the policy issued for the first respondent is a package policy, that if the Trailer is attached to the Tractor, the Policy will cover Coolie also and if any Coolie travels in the Tractor sustains injuries, then the Policy would cover them also. Hence, he irresistible conclusion would be that the Insurance Company has to be held liable to pay the compensation to the claimant.

7. The learned counsel for the appellant would cite a judgment of mine reported in Iffco-Tokio General Insurance Co. Ltd., v. Sulochana and others, 2008(2) TN MAC 302 : 2009 (2) LW 293, wherein I have referred and followed the Hon'ble Supreme Court decision wherein it is held as follows-

"6..... In support of his contention, the learned counsel for the appellant would draw attention to a decision of the Hon'ble Supreme Court reported in Ramashray Singh v. New India Assurance Co. Ltd., (2003) (3) CTC Page 380 wherein Their Lordships have held that while insurance policy covers only driver of motor vehicle and no other person employed in motor vehicle is covered under policy, the persons carried in pursuance of the contract of employment was construed as passenger under old Act, the present Act does not contain such provision, that insurance policy covers persons or class of persons specified in the policy, in such cases the insurance company cannot be held liable. After extracting Section 147 of the Motor Vehicles Act, 1988, the Apex Court has observed as under:

"10.The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases 'any person' and 'any passenger' in clauses (i) and (ii) of sub section (b) to Section 147(1) are of wide amplitude, is correct. (See: New India Assurance Company v. Satpal Singh and others, 2000 (1) SCC 237). However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured, in other words, if the person or

passenger; is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless, first: the liability of the insured arises under the Workmen's Compensation Act, 1923 and second : if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of any person or passenger. If this were permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word 'cleaner' while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger.

8. In Ex.R1, copy of policy certificate, it is found as follows -

"Liability to Public

ADD : Legal liability to driver coolies/other employees in connection with the operation &/or maintaining &/or unloading of Motor Vehicle, Endtt. 17 [1 person (s)]

ADD: For increased third party property, damage risks, Section 11-I(ii) Endtt. 70 Unlimited Amt."

9. The above said entries incorporated in the policy would make abundantly clear that there was contract between the owner of the vehicle and the insurance company and hence the insurance company has to be anchored with the liability to pay the compensation. In such view of this matter, the award

passed by the tribunal deserves to be confirmed and it is accordingly confirmed."

10. It is not in dispute that the 5<sup>th</sup> respondent had insured the vehicle with the appellant/Insurance Company under Farmers' Package Insurance, which is valid from 20.10.2010 to 19.10.2011. The certificate of insurance was marked as Ex.P2. The FIR was marked as Ex.P1, the copy of the RC Book was marked as Ex.P3, Postmortem report was marked as Ex.P1. Considering the oral and documentary evidences, the Additional Commissioner came to the conclusion that the deceased had died only due to the injuries sustained by him in the accident that had occurred on 25.06.2011. When the deceased had died in the course of employment, his dependants are entitled for compensation. The Division Bench of Karnataka High Court in the judgment reported in 2011 ACJ 2054 [Mounesh Vs. Thimmanna and another] held that the Tractor with a Trailer used for transportation of agricultural produce and other goods would be very much a goods vehicle. Besides, such a Tractor and Trailer would be a goods carriage within the meaning of Section 2(14) of the Motor Vehicles Act, in which event the risk of workmen/loaders of the Tractor-Trailer is necessarily to be covered under Section 147 as an Act Policy without collecting any additional premium. In that view of the matter, the Karnataka High Court held that the insurer would be liable to pay compensation in terms of the Workmen's Compensation Act. In the judgment reported in 2013 (2) TN MAC 620, this Court held that though the deceased was working as a cleaner in the Tractor at the time of the accident and no premium was paid to the cleaner under the policy of the above vehicle, when the Tractor was used for unloading the sand in the land belonging to the owner of the vehicle, it has to be construed that loading and unloading in the agricultural field by the Tractor has to be part of the agricultural work. Therefore, this Court held that the Insurance Company is liable to pay compensation, though no separate premium was paid in respect of the cleaner under the Policy.

11. The ratio laid down in these two judgments squarely applies to the facts and circumstances of the present case. In the case on hand, the deceased was loading sugarcane reeds in the Tractor-Trailer and he fell down from the Trailer and had died due to the head injuries sustained by him.

12. It is pertinent to note that the entire Insurance Policy was not marked by either of the parties. Only the Certificate of Insurance was marked by the claimants as Ex.P2. That apart, as per the judgment referred above, though no separate premium has been paid in respect of the loader/workman in the Tractor-

Trailer, when the Tractor-Trailer was used for transportation of the agricultural produce, the appellant/Insurance Company is liable to pay the compensation. The appellant could have marked the entire Insurance Policy in respect of the Tractor and substantiated their case. However, they chose not to mark the Insurance Policy before the Additional Commissioner. Therefore, I am of the considered view that the Additional Commissioner has rightly held that the appellant is liable to pay the compensation.

13. So far as the quantum of compensation is concerned, the Tribunal fixed the daily wages of the deceased at Rs.400/- and calculated the monthly income at Rs.10,400/- (i.e.) Rs.400/- for 26 days in a month. However, the Additional Commissioner restricted the monthly income to Rs.8,000/- as per Government of India vide S.O.No.1258(E) dated 31.05.2010. Applying the formula as prescribed under Section 4 of the Workmen's Compensation Act for determining the compensation, where death had resulted from the injury sustained by the deceased, fixed the compensation at Rs.7,47,600/- together with interest at the rate of 6% per annum.

14. So far as the contention of the learned counsel for the respondents 1 to 4 that the appellant/Insurance Company had filed the appeal without depositing the accrued interest as contemplated under Sections 30 and 30 (1)(a) of the Workmen's Compensation Act is concerned, on a perusal of the materials available on record, it could be seen that the appellant had filed the appeal after depositing the award amount of Rs.7,47,600/- before the Additional Commissioner for Employees' Compensation, Puducherry on 17.12.2014. However, the Insurance Company had not deposited the accrued interest prior to the filing of the appeal. Therefore, they are liable to pay the interest amount from the date of the application to the date of deposit as awarded by the Additional Commissioner.

15. The ratio laid down by the Division Bench of Kerala High Court reported in 2011 (2) TN MAC 48 (DB) (Ker.) [New India Assurance Co. Ltd. Vs. Biju] squarely applies to the present case. The appellant/ Insurance Company has to deposit the principal amount of compensation as well as the interest that has been ordered to be paid by the Additional Commissioner. In the case on hand, admittedly, the appellant has paid only the award amount without depositing the interest. The appellant should have deposited the award amount together with the accrued interest before the Additional Commissioner prior to the filing of the appeal and produced the certificate as proof of the same. If the entire award amount as stated is not deposited by the appellant, the Registry should not have numbered the appeal.

16. For the reasons stated above, I do not find any ground

much less any substantial question of law to interfere with the order passed by the Additional Commissioner for Employees' Compensation, Puducherry. The appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed.

17.The appellant is directed to deposit the accrued interest from the date of application till the date of deposit of the award amount (i.e.) 17.12.2014 before the Additional Commissioner for Employees' Compensation, Puducherry as directed in W.C.A.No.7 of 2011 within a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

va

To

1. THE DISTRICT MANAGER,  
UNITED INDIA INSURANCE COMPANY,  
PUDUCHERRY.

2. THE COMMISSIONER,  
ADDITIONAL COMMISSIONER FOR EMPLOYEES' COMPENSATION,  
PUDUCHERRY.

3. THE SECTION OFFICER,  
V.R. SECTION, HIGH COURT, MADRAS.

+1cc to Mr.S.ARUNKUMAR Advocate, S.R.No. 83140

+1cc to Mr.R.THIAGARAJAN Advocate, S.R.No. 82740

सत्यमेव जयते

Judgment in  
C.M.A.No.559 of 2015 and  
M.P.No.1 of 2015

RK (CO)  
TR(22/12/2017)

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