

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.01.2017

Judgment Pronounced on : 03.03.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.335 of 2009
and MP.No.1 of 2009

The National Insurance Co. Ltd.,
Coimbatore. Appellant

Vs.

1.Ammasai
2.A.Kannniammal
3.A.Mohammad ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30(1) of the Workmen Compensation Act against the judgment and decree passed in W.C.No.22 of 2005 on 11.09.2000 on the file of the learned Commissioner for Workmen Compensation, Coimbatore.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.Pa.Thangavel [for R1 & R2]
Mr.T.M.Kathikeyan [for R3]

JUDGMENT

On 27.04.2003 one Bhoopathy and three other loadmen who were travelling along with the scrap iron belonging to one Velusamy in a mini door auto rickshaw bearing Registration No. TN45-M-4162 of one Mohammed Ali (first opposite party before the Commissioner and third respondent herein) driven by the owner himself, capsized around 5.30 p.m. on Pongalur to Tiruppur Road. Veluswamy, the owner of the goods was following the mini door auto in his motor cycle and he appeared to have run to the scene of occurrence and shifted all those who were injured in the said accident to the hospital. Bhoopathy, one of the loadmen however died. Subsequently, the parents of Bhoopathy moved the Commissioner under Workmen Compensation Act seeking compensation on the primary allegation that Bhoopathy was working as an employee under the third respondent Mohammed. Before the

the Insurance Company contested the matter. In its counter, the insurance company has essentially contended that the first opposite party (the third respondent) had not submitted any claim stating that Bhoopathy was an employee under him and hence it was not liable to pay any compensation. It also took certain additional pleas namely that the driver of the goods carrier in question did not possess a valid driving licence at that time etc., These alone are relevant to the present controversy.

2. The Commissioner had entered a finding that Bhoopathy was an employee of the third respondent and consequentially awarded a sum of Rs.2,96,266/- and directed the appellant to deposit the same in default of which it directed payment of interest @ 12% per annum on the said sum.

3. Challenging the said award, more particularly the liability part of it, the insurance company has come forward with this appeal. At the time when this case was admitted, this Court framed the following substantial question of law:

"Whether the Commissioner of Labour for Workmen's Compensation has erred in holding that the insurance company is liable in respect of a claim of a load man when the policy of insurance does not cover the case of a load man in a mini door goods carriage vehicle? "

4. The learned counsel for the appellant contended that as per Ext.R-1, Insurance Policy, besides it being an "Act Policy", it only additionally covers one employee of the owner of the vehicle under Workmen Compensation Act. This one employee can only be a driver of the vehicle since the seating capacity of the vehicle is only one. He also attempted to argue that going by Ext.P1-FIR, the victim of the accident can never be considered as an employee under the third respondent.

5. Per contra, the learned counsel for the third respondent, who as indicated earlier opted to remain exparte before the Tribunal, argued that the victim of the accident was his employee and has relied on the authority of this Court in a batch of CMA cases (CMA Nos.945, 3826 to 3828, 3883, 3966 to 3968 of 2008) commencing with National Insurance Co. Ltd., Vs. Poongavanam & others.

6. Responding to the argument of the learned counsel for the appellant, the learned counsel for the respondents 1 & 2/claimants argued that a load man can be construed as an employee of the owner of the vehicle within the meaning of Section 147(1c) of the Motor Vehicles Act and accordingly the victim of the accident in the instant case would be termed as an

employee. He placed reliance in the authority reported in Sanjeev

Kumar Samrat Vs. National Insurance Co. Ltd., and Others [2013(1) TN MAC 15 (SC)]. He further submitted that the appeal itself is not maintainable since no court fee has been paid for the interest-component of the award which is in contravention to third proviso of Section 30 of the Workmen Compensation Act, and the appellant who faces liability on behalf of the third respondent, the employer of the victim of the accident has not deposited the interest portion payable. He relied on the authorities in Oriental Insurance Co., Ltd., Vs Siby George and others [2012 ACJ 2126 (SC)] and K.T.Padmanaban Vs. C.Palani [2016 (1) TNMAC 48].

7. The learned counsel for the appellant would now reply that a distinction had to be made between a passenger carrying vehicle and a goods carrier in that in a goods carrier other than the driver, or besides the driver the number of persons for whom seating capacity is provided in the cabin of the goods carrier alone can be reckoned for insurance cover. Should there be any other, it will not fall under the "Act Policy" cover or even under Workmen Compensation Act. Admittedly, the vehicle involved in this case is an auto rickshaw with a seating capacity for the driver alone, and the load-man such as the victim cannot be equated with the employee for who alone there is a seating capacity in the vehicle.

On maintainability of appeal:

8. The operative portion of the appeal only directs that interest has to be paid if there is a default in deposit of the sum determined as the compensation payable. True, this portion of the impugned order does not specify the time limit within which the said amount has to be deposited. However, under Sec. 4-A (3) of the W.C.Act, 1923, liability to pay interest arises only "where any employer is in default in paying the compensation due under this Act within one month from the date it fell due". When the appeal was admitted in 2009, the prevalent view was that the compensation amount that was required to be paid by the employer within the meaning of Sec.4-A(3) fell due on the date of the order of the Commissioner of labour. In Siby George case [2012 ACJ 2126], the Supreme Court relied on Pratab Narain Singh Deo Vs Shrinivas Sabata [1976 ACJ 141] decided by a Bench comprising four Judges and a three Judges decision in Kerala State Electricity Board Vs Valsala [2000 ACJ 5] and held that the compensation fell due on the date on which injury is suffered by an employee or death of an employee occasions. Therefore, the 30 days time for payment of compensation as provided in Sec.4-A(3) (a) of the Act arises from the date on which the employee gets a cause for seeking compensation. In the instant case the cause for seeking compensation arose on 27-04-2003. The impugned award was passed on 11-09-2008. On 30-09-2008, the insurance company has deposited the amount awarded but without including the interest portion payable before the Deputy

Commissioner of Labour. The point is whether this constituted proper valuation within the meaning of Sec.30 of the Act. The third proviso to Sec.30(1) reads: "Provided... that no appeal by an employer ... 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". If this provision is spread on the principle that the Supreme Court has re-stated in Siby George case (supra) then it is deducible that the amount to be deposited before the Commissioner of Labour as a pre-condition to prefer appeal should include interest calculated at 12% from the 31st day of the date of arising of cause of action. Since the appellant has not deposited the interest amount required to be deposited in terms of Sec.4-A(3)(a) of the Act, this very appeal cannot be maintained. So far as the decision in K.T.Padmanabhan Vs C. Palani is concerned, that was set to different context, where the appellant has contended that the appeal filed under Sec.30 was incapable of valuation.

On appellant's liability:

9. Essentially it is a question of fact founded on evidence. As to whether the right criterion has been reckoned while entering a finding such as that is a different question. Here is a goods carrier, an auto to be precise. Admittedly the victim had travelled accompanying the goods of one Veluchamy, on whose complaint FIR was registered. It is also an indisputable fact that the insurance policy is an Act policy and it is an equally indisputable fact that the appellant had received additional premium for one employee under W.C.Act. It covers one year from 23-03-2003 to 22-03-2004. Now, the appellant would contend that this additional premium was received only for the driver of the vehicle as the seating capacity for the vehicle was only one. This argument, it must be stated, is cleverly spun since a driver of a vehicle will have to be statutorily insured under proviso (i) to Sec.147 (1)(b) of the M.V.Act. Why should there be two cover for the same person, one in his capacity as a driver and again as an employee under W.C. Act?

10. One fundamental fact is not in dispute - that the victim was a loadman. The point now required to be addressed is, was he a loadman under the owner of the goods carrier or under one whose goods are carried in the auto when the accident took place? Here the Tribunal has concluded that he was rather a temporary employee under the owner of the auto. In a batch of appeals in CMA 945/2008 and others, this Court has held in circumstances similar to this, that it was a case of temporary employment, which needless to state fall within the definition of an employer under Sec.2(e) of the W.C.Act. Given the available material there exists no other choice than to affirm the finding entered

11.Looking from every conceivable angle this Court does not find any merit in the appeal and the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Commissioner
Workmen Compensation
Coimbatore.

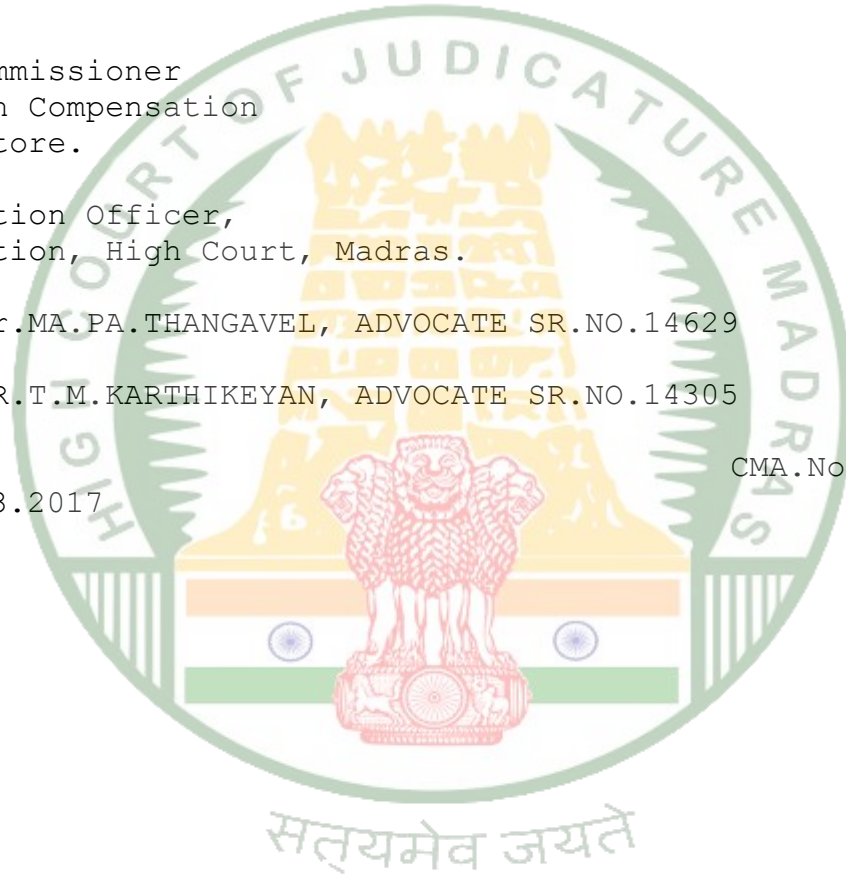
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.MA.PA.THANGAVEL, ADVOCATE SR.NO.14629

+1CC TO MR.T.M.KARTHIKEYAN, ADVOCATE SR.NO.14305

SDR 21.03.2017

CMA.No.335 of 2009



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