IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

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THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2410 of 2014
and
M.P.No.1 of 2014

M/s.United India Insurance Co. Ltd.,
The Branch Office,
Giriram Buildings, Main Road,
Gobichettipalayam, Erode – 638 452. ... Appellant

vs.

1.Subbulakshmi
2.M.Deivasigamani ... Respondents

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the order made in W.C.No.7 of 2007, dated 20.06.2012 on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Salem.

For Appellant : Mr.M.B.Ragavan
For Respondents : Mr.M.Venkadasalam, Amicus Curiae

J U D G M E N T

The appeal is by the insurance Company challenging the award of the Commissioner for Employees Compensation/ The Deputy Commissioner Labour, Salem made in W.C.No.7 of 2007. The said Original Petition was filed by the mother of one Sathish, who died in the motor accident that took place during the course of his employment as driver-cum-cleaner in the lorry belonging to the first respondent Deivasigamani insured with the second respondent/ appellant herein.

2. The factum of accident and the death of the driver-cum-cleaner/ Sathish are not in dispute. The first respondent namely Insurer of the vehicle did not contest the proceedings before the Commissioner. The second respondent Insurance Company resisted the claim on the ground that the said Sathish who was driving the vehicle did not possess a valid driving license and therefore, the Insurance Company cannot be made liable.

3. The learned Deputy Commissioner of Labour, Salem upon consideration of the evidence found that the said Sathish did not possess a valid license and that there has been a breach of conditions of the policy by the owner of the vehicle. However, the learned Commissioner would conclude that the Insurance Company is liable relying upon the judgment of the Kerala High Court in ***United India Insurance Co. Ltd and Annakutty*** reported in ***2005(4) LLN 946***. Aggrieved by the said award the Insurance Company is on appeal.

4. Heard Mr.M.B.Ragavan, learned counsel for the Insurance Company and Mr.V.Venkadasalam who was appointed as Amicus Curiae, since the respondent did not appear despite service of notice.

5. Mr.M.B.Ragavan, learned counsel for the Insurance Company would invite my attention to the judgments of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Mastan and another*** reported in ***AIR 2006 SC 577*** and ***Gottumukkala Appala Narasimha Raju and others Vs. National Insurance Co. Ltd. And another*** reported in ***2007 ACJ 1025.*** Inviting my attention to the following observations of the Hon'ble Supreme Court found in ***National Insurance Co. Ltd. Vs. Mastan and another*** reported in ***AIR 2006 SC 577*** in paragraph 22 and 35

> "22. *Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicles has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-a-vis the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different*

statute unless there exists express provision therefor. Section 143 of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have nay application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.

35. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act, 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as 'no fault' liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 *re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act, 1988 overriding effect. "*

The learned counsel would contend that the Commissioner exercisiong powers under the Employees' Compensation Act 1923 cannot even order the insurer to pay and recover the compensation from the insured.

6. The reasoning of the Hon'ble Mr.Justice P.K.Balasubramanyan in the judgment of the ***National Insurance Co. Ltd. Vs. Mastan and another*** referred supra was followed in ***Gottumukkala Appala Narasimha Raju and others Vs. National Insurance Co. Ltd. And another*** reported in ***2007 ACJ 1025***.

7. From the above pronouncements of the Hon'ble Supreme Court it is clear that the restriction embodied under Section 149(2), (4) and (5) of the Motor Vehicles Act cannot be extended to claim petition filed under the Employees' Compensation Act, 1923. Under the Employees' Compensation Act, the liability of the employer is absolute and insurance is only optional.

Therefore, the terms of the contract would cover the liability of the Insurance Company vis-a-vis the injured.

8. Mr.M.Venkadasalam, learned counsel who is appointed as Amicus Curiae would submit that the Insurance Company would be liable inasmuch as the policy that cover the liability in case of death or bodily injury to the driver is policy taken under Motor Vehicles Act. Therefore, the learned counsel would contend that the restrictions prescribed under Section 149 of the Motor Vehicle Act can be extended to the claim under Employees' Compensation Act, 1923.

9. I have considered the rival submissions. As rightly pointed out by the Mr.M.B.Ragavan, learned counsel for the appellant/ Insurance Company, the Motor Vehicle Policy is required to cover the liability of the owner in respect of death or bodily injury of a driver of the motor vehicle during the course of his employment. That may not lead to the interference with all the provisions of the Motor Vehicle Act could be applicable to the claim made under the Employees' Compensation Act, 1923.

10. In fact, the Hon'ble Supreme Court in the above two judgments has made it clear that the liability of an insurer to indemnify the employer under the Workmen Compensation Act, could be restricted to the terms of

the contract of insurance entered into between the employer and the Insurance Company.

11. The restrictions that are imposed under Section 145(2), (4) and (5) of the Motor Vehicle Act cannot be extended to claims under the Employees' Compensation Act, 1923, in order to prevent the Insurance Company from taking a defence that in the accident there was breach of conditions of the policy and therefore, the Insurance Company cannot be made liable.

12. In such view the matter, I do not think the Deputy Commissioner Labour/ The Commissioner for Employees' Compensation was right in holding that the Insurance Company would be liable to answer the award and indemnify the employer. Hence, the award of the Deputy Commissioner of Labour/ The Commissioner, Employees Compensation, Salem is liable to be set aside. Insofar as the Insurance Company is concerned the claim petition in WC.No.7 of 2007 will stand dismissed as against the Insurance Company.

R.SUBRAMANIAN,J.

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13. It is however submitted that the Insurance Company has deposited the award amount and it is likely that the claimant had withdrawn the money. Therefore, it is made clear that the Insurance Company will be at liberty to recover the compensation paid by it from the owner of the Vehicle namely the second respondent in the appeal without launching any separate proceedings for recovery. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. This Court places on record its appreciation of the valuable assistance rendered by Mr.M.Venkadasalam, learned counsel who had appeared as Amicus Curiae.

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Speaking order

To

The Commissioner for Workmen Compensation,
the Deputy Commissioner of Labour, Salem.

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and
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