



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.877 of 2016

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The Branch Manager,
United India Insurance Co. Ltd,
164-N, Kumar Complex,
Thiruchengode,
Namakkal District.

... Appellant

Vs.

1.Chithiravel
2.Papathi
3.N.Muthu
(R3 Exparte before the Commissioner)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923 to set aside the order dated 13.09.2015 made in WC.No.238 of 2005 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.N.Dilipkumar for Mr.N.Dharmar

For Respondents : Mr.S.Ponsenthil kumaran for R1&R2
R3-Exparte (vide in EB)

JUDGMENT

The insurance company has filed this appeal questioning the award passed by the Deputy Commissioner of Labour, Madurai on the ground of liability.

2.One Rasu @ Rajendran was working as a Helper in a mobile rig unit belonging to one N.Muthu. When the rig unit was being prepared for drilling operation an accident occurred leading to the death of the said Rasu @ Rajendran. The said helper was carrying the drilling rod. He lost his balance and fell down and the iron rod fell on him. In the ensuing accident he died. The parents lodged a claim under Workmen Compensation Act, 1923. Since the rig was covered by a insurance policy, the Deputy Commissioner of Labour, Madurai passed the impugned award awarding a sum of Rs.4,08,286/- to the claimants by fastening the entire liability on the insurance company. Questioning the same, this appeal has been filed.

3.This appeal was admitted as the following questions of law arose for consideration :

- 1.Whether the motor policy covered the risk of the deceased employed as helper in the rig unit ?
- 2.Whether any liability could be fastened as



against the appellant under the motor policy issued to the vehicle in respect of an employee employed in the rig unit.?

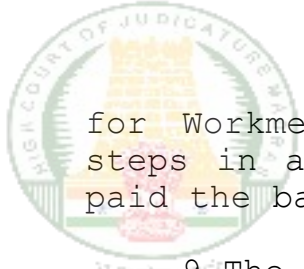
4. The learned counsel appearing for the appellant placed reliance on the Division Bench decision of this Court reported in 2004 (2) TN MAC 47 (DB) (*National Insurance Co. Ltd, V. Ayyadurai and Another*). The said case also involved a mobile rig unit. The employer had taken a policy which contained Endorsement No.37 corresponding to the present Endorsement No.47. As per the terms of the policy, the insurer will be liable to satisfy the third party claim arising out of the use of transport vehicle. But, where the rig was not being used as transport vehicle but used as a platform for carrying out drilling operation and an accident occurred, the insurer will not be liable in terms of the policy. This is the ratio laid down in the said Division Bench decision.

5. The same was also followed by a learned Single Judge of this Court reported in 2010 2 TN MAC 554 (*Divisional Manager, United India Insurance Company Ltd Vs. K.Pavayee and another*). In the present case also the insurance policy was marked. It is seen that the liability of the insurance company was limited in respect of an accident as per the M.V. Act, 1989. The said policy carried IMT Endorsement Nos.21, 47, 52, 24 and 37. It can be stated that the factual matrix obtaining in the case on hand is similar to what obtained in the Division Bench decision reported in 2004 (2) TN MAC 47 (DB) (*National Insurance Co. Ltd, V. Ayyadurai and Another*).

6. Admittedly, the accident occurred when the rig unit was being used for drilling operation. It was stationary at that time. The deceased workman was carrying an iron rod. The accident did not occur on account of the use of the motor vehicle. Therefore, the Commissioner for Workmen Compensation clearly erred in fastening liability on the insurer.

7. I therefore answer both the substantial questions of law in favour of the appellant. The appellant is exonerated of the liability. Since this is an appeal arising out of the workmen compensation claim, the appellant had to deposit the entire award amount. The claimants were permitted to withdraw a sum of Rs.2.00 lakhs. It is made clear that the appellant insurance company will not be at liberty to recover what was withdrawn by the claimants/representatives of the deceased workmen. The balance amount alone can be refunded to the appellant insurance company.

8. As regards the quantum of compensation, the award passed by the Deputy Commissioner of Labour, Madurai stands confirmed. The employer N.Muthu / third respondent herein is liable to satisfy the claim of the claimants insofar as the balance amount is concerned. As per Section 31 of the Employees Compensation Act, the Commissioner has the power to recover as an arrear of land revenue any amount payable by any person under this Act. The Commissioner



for Workmen Compensation is hereby directed to take appropriate steps in accordance with law and to ensure that the claimants are paid the balance amount due and payable to them.

9. The award dated 13.09.2015 made in WC.No.238 of 2005 on the file of the Deputy Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai is modified. This appeal stands allowed on the above terms. No costs.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour), Madurai

2. The Record Keeper, Vernakular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.S.PON SENTHILKUMAR, Advocate, SR.88879

+1cc to Mr.N.DILIP KUMAR, Advocate, SR. 88894

C.M.A. (MD) No.877 of 2016
22.11.2017

SKM

KK/SV MMS/SAR 4/27.02.2018/ 3P- 5C/