

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA. No.1773 of 2003

National Insurance Co.Ltd.,
Udagamandalam

... Appellant/4th Respondent

Vs

1. U.P. Chandy ...1st Respondent/Applicant

2. The Chairman
Tamil Nadu Electricity Board, Chennai.

3. Karamchand Thapur Brothers Ltd.,
Thapur House,
25, Brahour Road,
Calcutta.

4. P. Hamsa ... 2 to 4 Respondents/
1 to 3 Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 30 of Workmen's Compensation Act 1923, against the award made in W.C. No. 2 of 2000 dated 31.12.2002 (served on 10.04.2003) on the file of Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Coonoor.

For Appellant : Mr.N. Vijayaraghavan and
Mr. M.B., Raghavan

For Respondetns : Mr. S.K. Rakhunadhan - For R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award made in W.C. No. 2 of 2000 dated 31.12.2002 (Served on 10.04.2003) on the file of Commissioner for Workmen's compensation, Deputy Commissioner of Labour, Coonoor.

The brief facts of the claim application are as follows:

2. The deceased U.C. Aji, son of the claimant, was a Worker under the 3rd respondent at Singara power house work site over the last two years prior to the occurrence. The third respondent

is the sub contractor of the 2nd respondent. On 20.08.1990, the deceased, during the course of carrying out his avocation, feeling unwell, fell down and sustained fatal injuries. The Co-workers of the deceased took him to hospital and he died on 21.08.1996 at about 8.00 p.m. The claimants, who are the legal heirs of the deceased filed claim petition, claiming a sum of Rs.2,18,470/-.

3. The appellant / Insurance company, who is the 4th opposite party before the tribunal has filed the counter statement contending that the 3rd respondent has taken only a group personal accident policy with them and the deceased was a Worker under the said 3rd respondent. It is also argued by the learned counsel for the appellant that the said policy is the group personal accident policy, which covers for 189 members and the deceased coming under the group of calasy. It is further contended by the appellant / Insurance Company that Ex.R-1, the policy of insurance is not with reference to liability arising under the Workmen's Compensation Act.

4. The Deputy Commissioner, Workmen's Compensation Tribunal, on analysis of the materials placed before it, rendered a finding that the 3rd respondent herein is the main contractor under the 2nd respondent and that there existed no relationship of employer-employee between the deceased and the 2nd respondent herein.

5. It is the contention of the 3rd respondent that it is for the claimant to prove that the incident occurred during the course of employment. The claimant having not proved that the incident occurred during the course of his employment, the claim as made by the claimant is unsustainable. Further, it is clear from the materials and record available that the place of incident is 8 kms., away from the place of employment and that the deceased was found in a drunken stage, due to which he was sent to home with the assistance of other employees. It is further submitted that the deceased did not attend work on the subsequent date 21.08.1996 and from that day onwards he did not turn up for duty.

6. The Tribunal, after analysing the evidence and documents, has observed that the respondents have not produced any materials to substantiate their stand in their counter. The Tribunal has also noted that no documents have been filed to prove that the deceased was under the influence of alcohol. The Tribunal further found that it only the Doctor, who treated the deceased has stated that at the time when he was produced before him, he was under the influence of alcohol. The Doctor, R.W.3,

has further found that he found no injury, but only blood was oozing from his ears and further deposed that it may be due to the injury on the head.

7. On an overall consideration of the materials before it, the Tribunal held that the deceased was employed under the 3rd respondent and the policy was also taken by the 3rd respondent and, therefore, the appellant / Insurance company is liable to pay the compensation. It is not in dispute that the policy is a group personal accident policy and the said policy was taken by the 3rd respondent.

8. On perusal, it is observed by this Court that when the nature of policy is the group personal accident policy, which covers for 189 members and the deceased coming under the group of calasy, it would be proper if the coverage for a person is restricted to an extent of Rs.65,000/- only. Such being the case, the award passed by the tribunal to the tune of Rs. 2,18,470/- (entire claim) is not justifiable and the same has to be set aside.

9. Taking into consideration of the above facts, nature of policy, this Court is of the view that the award passed by the Tribunal is modified to Rs.65,000/- only. Accordingly, the award passed by the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed in part. However, there shall be no order as to costs.

10. In view of the above, the appellant / Insurance Company is directed to deposit the compensation as determined by this Court, less the amount already deposited, if any, along with interest @ 7.5 % per annum from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the first respondent / claimant, through RTGS, within a period of two weeks thereafter.

WEB COPY

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Labour,
Coonoor.

2.The Section Officer,
VR Section, High Court, Madras-104.

+lcc to M/S.S.K.Rakhunathan, Advocate Sr 71249
+lcc to M/S.N.Vijayaraghavan, Advocate Sr.71518

C.M.A. No. 1773 of 2003

cp[co]
srg 03/07/2019



WEB COPY