

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11.07.2018

Judgment Pronounced on : 05.10.2018

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.1499 of 2016 &
CMA Nos.1496, 1497, 1498, 1470 & 1472 of 2016
and

CMP.Nos.11403, 11400, 11401, 11402, 11286, 11288 of 2016

CMA.No.1499 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Boorkibairr Salam
2.Batru
3.P.Dhanasekar

.. Respondents

CMA.No.1496 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Seetai
2.Mangali Bai
3.Chaitu Ram
4.P.Dhanasekar

.. Respondents

CMA.No.1497 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Jaisingh # Dhaniram
2.P.Dhanasekar

.. Respondents

CMA.No.1498 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Sandai Karanga
2.Motiram Karanga
3.P.Dhanasekar

.. Respondents

CMA.No.1470 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Rahul
2.P.Dhanasekar

.. Respondents

CMA.No.1472 of 2016 :

United India Insurance Company Limited
"Silingi Building" IV Floor
No.134, Greams Road
Chennai - 600 006.

.. Appellant

Vs.

1.Ramu
2.P.Dhanasekar

.. Respondents

Prayer in CMA.No.1499 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.503 of 2013 on the file of the Commissioner for Employee's Compensation, Chennai.

Prayer in CMA.No.1496 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.500 of 2013 on the file of the Commissioner for Employee's Compensation, Chennai.

Prayer in CMA.No.1497 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.501 of 2013 on the file of the Commissioner for Employee's Compensation, Chennai.

Prayer in CMA.No.1498 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.502 of 2013 on the file of the Commissioner for Employee's Compensation, Chennai.

Prayer in CMA.No.1470 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.57 of 2014 on the file of the Commissioner for Employee's Compensation, Chennai.

Prayer in CMA.No.1472 of 2016 : Civil Miscellaneous Appeal preferred under Section 30 of the Employees Compensation Act, 1923, against the final award dated 17.03.2016 (received on 14.05.2016) passed by the learned Deputy Commissioner of Labour-II, Chennai, in E.C.No.59 of 2014 on the file of the Commissioner for Employee's Compensation, Chennai.

In CMA.No.1499 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1 & R2]
R3 - No Appearance

In CMA.No.1496 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1 to R3]
R4 - No Appearance

In CMA.No.1497 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1]
R2 - No Appearance

In CMA.No.1498 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1 & R2]
R3 - No Appearance

In CMA.No.1470 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1]
R2 - No Appearance

In CMA.No.1472 of 2016

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.K.Varadhakamaraj [R1]
R2 - No Appearance

COMMON JUDGMENT

These batch of six cases, all of which arise out of a separate orders of Deputy Commissioner of Labour-II, Chennai [Workmen's Compensation]. The details thereto are as follows :

Sl.#	CMA.No.	W.C.No.	Claimant
1	1496 of 2016	500/2013	Seetai
2	1497 of 2016	501/2013	Jaisingh @ Dhaniram
3	1498 of 2016	502/2013	Sondai Karanga
4	1499 of 2016	503/2013	Boorkibairr Salam
5	1470 of 2016	57/2014	Rahul
6	1472 of 2016	59/2014	Ramu

2. The facts may be briefly stated here:

On 29.10.2013, at about 23.00 hours, about ten people working in a bore well rig were travelling from Kancheepuram to Brahmadesam, and on the way the vehicle capsized, owing to which, four were killed and five were injured. Subsequently, the legal representatives of the four, who lost their lives in the accident and two of the injured workers have approached the Tribunal/Labour Court seeking compensation for the loss of life or for the injuries suffered, as the case may be, in the said accident. The tenth worker who was travelling in the vehicle was a cook, who on early morning on the following day informed the concerned police about the accident, based on which, FIR was registered. After enquiry, the Tribunal/Labour Court had passed the following amounts as compensation to each of the claimants before it. The details are as below :

W.C. No.	Compensation Amount (Rs.)	Nature of Accident (Fatal/Injury)
500/2013	8,05,948/-	Fatal
501/2013	8,05,948/-	Fatal
502/2013	8,05,948/-	Fatal
503/2013	8,11,119/-	Fatal
57/2014	3,89,279/-	Injury
59/2014	2,91,959/-	Injury

3. Since all the appeals arise from the same accident, this Court decides to consolidate them during in this hearing.

4. The learned counsel for the appellants made the following submissions :

- The registration certificate of the vehicle in question which is marked before the Labour Court shows that the class of the vehicle is stated to be "Multi Axle Goods Vehicle". However, a bore-well rig can neither be termed a goods-vehicle nor can be considered as a closed vehicle. As per Section 41(4) of the Motor Vehicles Act, the vehicle in question falls under the category of non-transport vehicle.
- In the policy of the insurance, the vehicle was insured as "Open Type Goods Vehicle".

A combined reading of the above would indicate that the owner of the vehicle has wilfully converted a "Close Type Goods Vehicle" into a "Bore-well Rig" which falls under the clause of non-transport vehicle as indicated above.

5. The compulsory third party liability to which the insurance cover must be obtained and issued in terms of Section 147 of the Motor Vehicles Act limits the insurance cover to liability arising in respect of the death out of and in the course of employment. Other than the liability arising under the Workmen Compensation Act, 1923, that provided such employee should either be engaged in driving the vehicle or whether it is a public transport carrier which includes a conductor and a ticket examiner, or if it is a goods carriage, anyone being carried in the vehicle accompanying the goods, the insurance company will be liable if only it has undertaken a contractual liability to pay compensation.

6. Here Section 149(2) (b) says that no sum is liable to be paid by an insurer if a policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact, which was false in some material particulars. In the instant case, while the vehicle was used as a bore-well rig, the owner of the vehicle has conveniently insured it as Open Goods Vehicle. This disclosure of fact is neither in conformity to the reality of use to which the vehicle was put to and it was not even consistent with the material particulars disclosed by the registration certificate. A contract of insurance is an uberrimofide contract, and where there is a material non-disclosure that goes to the root of the contract, the entire contract becomes void and the insurance company will consequently be absolved of its liability.

7. This Court, though finds the argument impressive on the first blush, on a closer scrutiny finds lack of merit in it to impact the award of the Court below. What affects the interest of the insurance company vis a vis a contract of insurance is the extent of risk a vehicle in a particular class is estimated to be exposed, as the same affects its liability to arise out of the said contract. Premium payable for a particular class of vehicle is reckoned taking into account several factors that affects the risk to be insured and the possible liability that may visit the insurance company. In the instant case, the vehicle was originally insured at a higher premium in the class as Closed Goods vehicle. And, a bore-well rig falls under the class of non-transport vehicle. For this the premium chargeable is a bare Rs. 1,000/-, which is far less than the premium payable for closed goods vehicle. Therefore, how does the alteration of the vehicle in one class into a vehicle into another class affect the commercial interest of the insurance company? Therefore, the non-disclosure of this fact to the insurance company, though is may be termed important, still is cannot be considered as material enough to absolve the insurance company of its liability, since it has received a higher premium than the one payable for the non-transport vehicle. It is only that fact the non-disclosure of which affects the right or interest of a party to the contract, and consequently expose such party to a liability higher than the one he has undertaken, constitutes a material fact. When the premium is several times more than what is required to paid and has been received by the insurance company, it is not appropriate for it escape liability on the ground of non-disclosure of material fact.

8. In the result, these Civil Miscellaneous Appeals are dismissed and the orders dated 17.03.2016 passed by the Deputy Commissioner of Labour-II, Chennai, in E.C.Nos.500 to 503 of 2013, E.C.Nos,57 and 59 of 2014 on the file of the Commissioner for Employee's Compensation, Chennai is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Deputy Commissioner of Labour-II,
Teynampet, Chennai - 600 006
 2. The Section Officer,
VR Section,
High Court, Madras.(2 copies)
- +6 cc to Mr.J.Michael Visuvasam, Advocate, SR Nos.68790 to 68795.
+6 cc to Mr.K.Varadhakamaraj, Advocate, SR Nos.69113 to 69118.

CMA.Nos.1499 of 2016 &
CMA Nos.1496, 1497, 1498, 1470 & 1472 of 2016

kji(co)
ssm(21/12/18)

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