

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.131 OF 2007

The New India Assurance Co.Ltd.,
Third Party Cell, NO.45, Moore Street,
Chennai-600 001.

Appellant

-vs-

1.N.Kuppusamy
2.Radha
3.The Management,
M/s.Sical CWT Distripark Ltd. ...
Ponneri High Road
Koundarpalayam Chennai-600 120

Respondent

Appeal against the order, dated 19.10.2006, passed in
W.C.No.395 of 2004 on the file of Commissioner for Workmen's
Compensation-II (Deputy Commissioner of Labour-II), Chennai.

For appellant : Mr.C.Ramesh Babu
For respondent 1 : Mr.D.Dayanidhi
For respondent 3 : Mr.S.Kalaiarasi

JUDGMENT

This appeal is directed against the award passed in
W.C.No.395 of 2004, dated 19.10.2006, by the authority for
Workmen's Compensation, fixing liability on the appellant-
insurance company.

2. According to the appellant-insurer, the policy under
the workmen's compensation does not cover the sub-contracts; the
claimants was employed under the second respondent-contractor,
and, therefore, they are not liable to pay compensation.

3. On the other hand, the first respondent would
contest that the insurance policy covers the sub-contract also
and there is no specific exclusion, excluding the contractor
directly engaged by the employer, and, therefore, the policy
covers the workmen under the contractor also.

4. I have perused the material available before this Court.

5. The admitted fact is that the third respondent management has executed a contract to the second respondent. While the first respondent-claimant was working as a loadman within the premises of the third respondent, he met with an accident and suffered injuries. From the averments, it is clearly inferred that the incident took place within the premises of the third respondent and the workman was under the direct control and supervision of the third respondent. Even though there is an averment that the workmen are engaged through a sub-contractor, namely, M/s.Vinayaka Enterprises and M/s.Hemachandra Enterprises, there is no clear evidence to prove the same. Therefore, the authority under the Workmen's Compensation has fastened the liability on second and third respondents and since they were covered by the insurance policy issued by the appellant-insurance company, the appellant was made liable to pay compensation. Since it is clearly proved that the accident has taken place within the premises of the third respondent through the employees of the second respondent, the claimant is entitled to get compensation from the third respondent. The insurance policy under the Workmen's Compensation Act marked as Ex.W-1 does not exclude the workers under the second respondent-contractor. It excludes only the workmen under the sub-contractor. Hence, it is clearly proved that the claimant is engaged by the second respondent, under the control and supervision of the third respondent. The insurance company is liable to pay compensation as per the policy conditions, for the accident that took place in the premises of the third respondent. The authority under the Act has rightly decided that the appellant-insurance company is liable to pay compensation. In respect of other aspects with regard to income and age, there is no dispute. In such circumstances, I hold that the finding of the authority under the Act is very much legal and sustainable.

6. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award passed by the authority below. No costs. Consequently, the connected C.M.P.No.1 of 2007 is closed.

7. Learned counsel for the appellant would submit that the insurance company has deposited the entire award amount and 50% of the same has been withdrawn by the claimant. In the given situation, the respondent-claimant is entitled to withdraw the balance amount, with interest accrued thereon.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

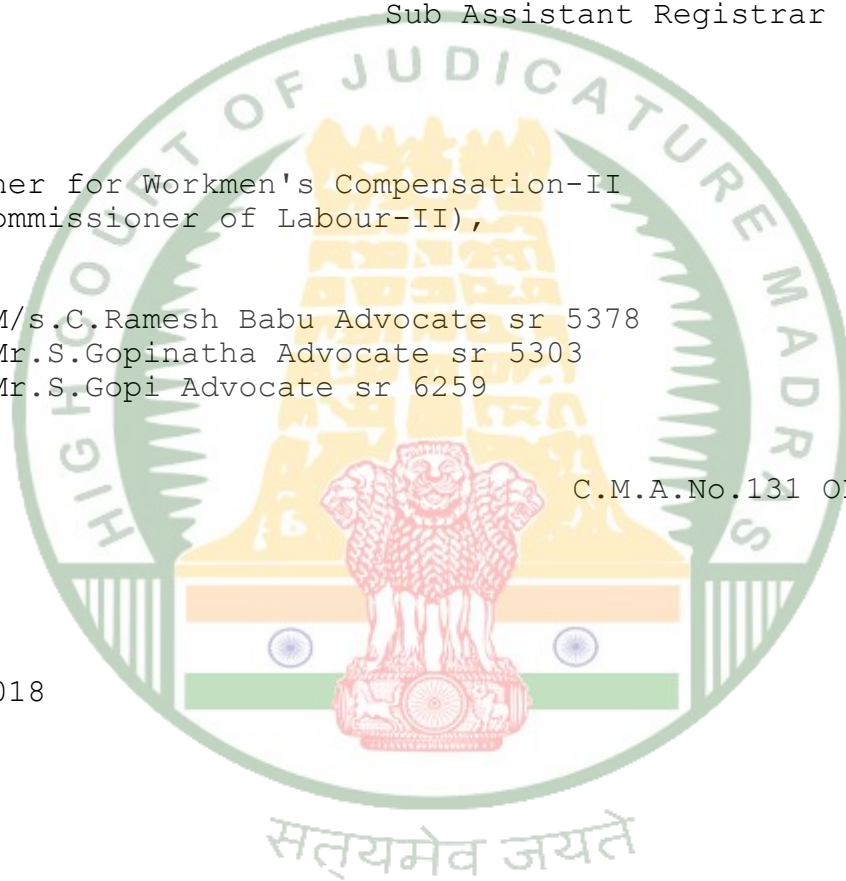
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To
Commissioner for Workmen's Compensation-II
(Deputy Commissioner of Labour-II),
Chennai.

+1 cc to M/s.C.Ramesh Babu Advocate sr 5378
+1 cc to Mr.S.Gopinatha Advocate sr 5303
+1 cc to Mr.S.Gopi Advocate sr 6259

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