

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2463 of 2010

and

C.M.P.No.1 of 2010

M/s.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai 600 002.

... Appellant

Vs.

1. D.Hemavathy

2. Udayakumar

3. Saveetha Medical & Educational Trust,
New No.162, Poonamallee High Road,
Vellappan Chavadi,
Chennai - 600 077.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 30 of Workmen's Compensation Act, 1923, against the order made in W.C.No.9 of 2006, dated 25.05.2009, on the file of the Commissioner of Workmen's Compensation, Deputy Commissioner of Labour - I, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondent-1 : Mr.K.Varadha Kamaraj
For Respondents-2&3 : A.S.Rajkumar Vadivel

JUDGMENT

This is an appeal filed by National Insurance Co. Ltd., against the award made in W.C.No.9 of 2006 dated 24.05.2009 for Rs.1,31,544/- for assessed loss of earning capacity of 30% for a 13 year old minor workman. The insurer has challenge the award on the ground that as per policy of insurance coverage was obtained only 14 workmen whereas more of such workmen were employed at the time of accident on 29.10.2002 and there was suppression of material fact on number of workmen engage and as such there was no coverage for the injured workmen.

2.This Court has carefully considered the submissions of the insurer in this regard. Admittedly, there was a policy of insurance in force between 27.11.2001 to 26.11.2002 covering the date of accident on 29.10.2002 and the injured victim was a workmen who met with the accident in the course of employment and injuries arose out of employment also. While so, the insurer has filed only Ex.R-2 Insurance Policy but not the proposal from to prove the number of workmen sought to be insured and any suppression in this regard by the employed / insured. Though the insurer has marked Exs.R-3 to R-6 claiming awards already passed against them and as such the present workmen should be denied any indemnity. In the absence of any credible evidence of no cover for this workmen and breach by insured, this Court is not inclined to interfere with the factual finding of the Lower Court.

3. It is settled law that any appeal under Section 30 of E.C.Act, 1923 can be pursued only in the face of substantial question of law. The entire case in this claim relates to factual finding and no case is made out on substantial question of law, more so, when the finding of the Lower Court is based on evidence before it. Hence, the legal submission of the insurer is not supported by factual foundation and therefore is fit to be rejected.

4.So far as quantum is concerned at R.1,31,545/-, no serious dispute was raised and it is a modest amount based on proven disablement and accepted loss of earning capacity. In any case, on quantum, no case can be made out on substantial question of law.

5.For any and all the above reasons, this Court does not find any merits in the appeal and accordingly the appeal stands dismissed confirming the award of the Lower Court. The insurer having already deposited the award sum it would be open to the claimant to withdraw the same. The appeal stands disposed of in terms herein above and there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

bkn

To

The Commissioner for Workmen's Compensation ,
(Deputy Commissioner of Labour), Chennai.

+ 1 cc to M/s. N. Vijayaraghavan, Advocate Sr.9493
+ 1 cc to M/s. K. Varadha Kamaraj, Advocate Sr.9118

C.M.A.No.2463 of 2010
and
C.M.P.No.1 of 2010

NRI (CO)
EU(12/11/2018)



WEB COPY