IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.2395 of 2007
and M.P.1 of 2007

The Divisional Manager
M/s.National Insurance Co.Ltd.,
Divisional Office,
Pondicherry 605 001 ...Appellant

vs

1. Amirthalingam

2. Vedavalli

3. Thennarasu
Contractor,
C/o.M/s.Chem Plast Sanmar Ltd.,
Kadam Puliyur 607 103.

4. M/s.Chem Plast Sanmar Ltd.,
Kadam Puliyur 607 103 ... Respondents

Civil Miscellaneous Appeal filed under Order 30 of the Workmen's Compensation Act, 1923, against the award dated 28.03.2007 passed in W.C.No.220/2005 by the Commissioner for Workmen's Compensation - II/Deputy Commissioner of Labour - II, Chennai 6.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.K.Moorthy for R3
Mr.S.Harron
for Mr. T.S.Gopalan for R4

J U D G M E N T

This appeal is directed against the award under Workmen's Compensation Act in W.C.No.220 of 2005 dated 28.03.2007 on the file of Deputy Commissioner for Workmen Compensation - II Chennai.

2. The grievance of the appellant/claimant is that the Deputy Commissioner of Labour - II ought to have awarded interest on the award amount, after a period of 30 days from the date of accident as per Section 4-A of Employee's Compensation Act, 1923 and not from the date of order passed by him. Further the third respondent who is a contractor has taken a policy in respect of 10 of his employees for a sum of Rs.45,000/- for a period of three months. On the death of one of the employee of the third respondent, dependents laid a claim petition. Analysing the quantum and liability on the basis of oral and documentary evidence, the authority awarded a compensation a sum of Rs.4,31,578/- in favour of the claimants and directed the appellant Insurance Corporation to pay the same as it is covered by the policy.

3. According to the Insurance Company the policy is taken for 10 employees on the monthly wages of each employee @ Rs.1500/- for three months. Therefore, 10 x 1500/- x 3 = 45,000/- as per the terms and conditions attached to the insurance policy, the Insurance company is liable to pay a proportionate amount corresponding to the premium paid to the individual employee. According to the insurance company, the liability is limited to the extent of Rs.50/- per day per employee and the rest of the amount is payable only by the employer. The condition No.6 of the policy which is relevant to the facts of the case reads as follows:-

> "The first premium and all renewal premiums that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid by the insured to employees during each period of insurance. The name of every employee together with the amount of wages salaries and other earnings shall be properly recorded and the insured shall at all times allow the Company to inspect such records and shall supply the Company with a correct account of all such wages salaries and other earnings paid during any period of insurance within one month from the expiry date of such period of insurance. If the amount so paid shall differ from the amount on which premium has been paid the difference in premium shall be met by a further proportionate payment to the Company or by a refund by the Company as the case may be".

4. The learned counsel for the contractor/3rd respondent contend that the terms and conditions were not marked as a document before the authority and it is not attached to the policy. Therefore the insurer cannot insist on condition No.6 as extracted above. In the absence of any evidence to the limited liability to pay at Rs.50/- per day and Rs.1500/- per month per

employee, the contention of the Insurance company that they are not liable to pay the compensation beyond the amount of Rs.1500/- is not sustainable.

5. Heard all the parties and perused the documents placed on record.

6. On a perusal of the documents marked before the authority, it is clear that Insurance policy is marked as Ex.R1 and the policy taken in respect of painting works is marked as Ex.R2. The policy would further reveal that it covers 10 employers for a sum of Rs.45,000/- for two months. But there is no specific mention as to the salary of individual employee. The employer has deposed before the authority that the deceased employee was drawing Rs.1440/- per day but has not filed any proof with regard to the same. In the absence of any documentary evidence the authority has fixed the loss of income as per the Minimum Wages Act.

7. The insurance policy covers workmen. The preamble portion of the policy and the conditions attached to it reveals that the insurer indemnified the employer against all sums including the cost. In such circumstances without there being any specific clause of limited liability this Court is not inclined to accept the contention of the learned counsel for the appellant. The authority, under Workmen's Compensation Act, has rightly found that the claim made by the dependants of the deceased employee is covered by insurer and the Insurance Company is liable to pay the compensation. Therefore, I do not find any infirmity in the findings of the authority under Workmen Compensation Act warranting interference. Accordingly the Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Commissioner for Workmen's Compensation - II/
Deputy Commissioner of Labour - II,
Chennai 6.

2. The Divisional Manager
M/s.National Insurance Co.Ltd.,
Divisional Office, Puducherry 605 001

Copy to

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.14175
+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.14244
+1cc to Mr.K.Moorthy, Advocate, S.R.No.14266
+1cc to Mr.R.Sreedhar, Advocate, S.R.No.14437

C.M.A.No.2395 of 2007
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cp(CO)
srg(17/05/2018)