

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2832 OF 2009
AND M.P.NO.1 OF 2009

National Insurance Co. Ltd.,
Maruthi Complex,
Swarnapuri, Salem.
Represented by Divisional Manager
National Insurance Co. Ltd.,
Paramathi Road,
Namakkal. Appellant

Vs.

1.K.Arumugam
2.D.Devaki
3.S.Saravanan Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of Workmen Compensation Act, 1923, against the award dated 31.07.2006 made in W.C.No.103 of 2004 on the file of Workmen's Compensation Commissioner, DCI, Salem.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal arises against the order passed in W.C.No.103 of 2004 by the Workmen Compensation Commissioner, Salem, dated 31.07.2006.

2. The insurance company is the appellant herein. The main ground raised in the appeal is that as per the Registration Certificate, the second respondent is the owner. However, the insurance policy stands in the name of the third respondent and hence the appellant - insurance company is not liable to pay compensation in the absence of transfer being effected.

3. On the basis of the said ground, the following substantial questions of law were raised in the appeal.

"1) Whether the Commissioner of Labour can award compensation to person not coming under the purview of Workman as defined under Sec.2(n) of the Act ?

2) Whether the Commissioner of Labour was correct in holding that the appellant is liable inspite of the fact that the insured had no insurable interest on the date of cause of action ?

3) Whether the Commissioner of Labour was correct in directing the appellant to pay compensation when admittedly no privity of contract existed between the appellant and employer of the claimant ?

4) Whether the Commissioner of Labour was correct in applying S.147(1)(b)(i) of the M.V.Act, when admittedly the first respondent was not employee of the insured Mrs.T.Devaki ?

4. The case of the claimant is that he was working as a Driver under the second respondent. On 28.01.2004, he met with an accident while driving Lorry bearing Registration No.TMW 4915. In the accident, he suffered grievous injuries on his fore-head, chest and left leg. He has filed the claim petition for the injuries suffered by him during the course of employment.

5. However, the appellant - insurance company has taken a stand that at the time of accident, the owner of the vehicle, as per R.C. Book was Mr.Saravanan, the third respondent herein, whereas the insurance policy stands in the name of Ms.Devaki, the second respondent herein, for the period 01.08.2003 to 31.07.2004. On transfer of the vehicle without intimation to the insurance company, the policy ceased to exist and there was no privity of contract between the appellant - insurance company and the owner of the vehicle. On the date of accident, the injured Driver was working under one Saravanan, the third respondent herein, and there was no employer - employee relationship between the second respondent and the injured Driver. Therefore, they are not liable to pay compensation, as there is no privity of contract between the owner of the vehicle and the insurance company.

6. Heard the submissions made on either side and perused the materials available on record.

7. The admitted fact is that the injured claimant was

working under Ms.Devaki, the second respondent herein, and the insurance policy covers the date of accident i.e., 28.01.2004. It appears that the vehicle was transferred to one S.Saravanan, the third respondent herein, with effect from 23.09.2003. Since the insurance policy stood in the name of Ms.Devaki and not transferred in favour of S.Saravanan, the appellant - insurance company claims that they are not liable to pay compensation. But the Authority under the Workmen Compensation Act has held that the insurance company is liable to pay compensation.

8. A perusal of Section 157 of the Motor Vehicles Act, 1988, goes to show that where a person transfers ownership of the the vehicle to another person, the motor vehicle, in respect of which such insurance was taken together with the policy of the insurance, shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

9. In the instant case, the ownership of the vehicle was transferred with effect from 23.09.2003. In that event, the transfer shall include transfer of rights and liabilities of the said certificate of insurance and also policy of insurance. Therefore, the contention of the appellant - insurance company that once the insured sells a vehicle, the insurance policy ceased to exist and the insurance company is not liable to pay compensation, is not sustainable. The insurance policy goes with the vehicle and the liability to compensate the injured Driver also goes with the transfer of vehicle. Therefore, the contention of the appellant - insurance company that there is no privity of contract between the third respondent and themselves, is not tenable. The substantial questions of law raised by the appellant - insurance company is answered in the negative and in view of Section 157 of the Motor Vehicles Act, 1988, the appellant - insurance company is liable to pay compensation.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

TK

To

The Workmen's Compensation Commissioner
(Deputy Commissioner of Labour)
Salem.

+1cc to Mr.Arun Kumar, Advocate SR.No.7667

C.M.A.NO.2832 OF 2009

GMI (CO)
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