IN THE HIGH COURT OF JUDICATUE AT MADRAS
DATED 19.09.2018

CORAM
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2860 of 2009

Kamatchi .. Appellant

Versus

1. P.Kandasamy,
   Proprietor, Mass India
   Tiruchengode -11.

2. M/s.National Insurance Company Ltd.,
   Divisional Office -II,
   II Floor, Ramakrishna Road,
   Salem -7. .. Respondents

Civil Miscellaneous Appeal filed under Section 30 of W.C.Act, against the Order of the Deputy Commissioner of Labour, Salem, Commissioner for Workmens Compensation Salem, dated 30.06.2008 made in W.C.No.802 of 2005.

For Appellant : Mr.K.Kuppusamy

For Respondents : Ms.R.Sree Vidhya for R2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Order of the Deputy Commissioner of Labour, Salem, dated 30.06.2008 made in W.C.No.802 of 2005.

2. The brief facts of the case are that the deceased Periyasamy who is the husband of the applicant, was working as a Driver cum Rig Engine Operator of Rig Lorry for many years and the said Rig lorry is owned by the first opposite party. On 27.02.2004 during the course of employment, the deceased Periyasamy after completion of the work at a site, got down in a well to close down the air lock, after doing so, when he was climbing up, he slipped and fell into the well and sustained sustained injuries on his head and spine and he was taken to Attur Government Hospital, where he died. Since the deceased Periyasamy died in the course and out of the employment under the first opposite party, the applicant, who is the wife of the deceased filed a case claiming compensation for a sum of Rs.5,00,000/- from the Proprietor of the Company.

3. In the counter filed by the first opposite party ie., the Proprietor of the company has stated that the second opposite party is insurer of the lorry at the time of accident. The Insurance for the said Rig Lorry was in force at the time of death of the workman. Hence, the second opposite party/insurance company is liable to pay the compensation.

4. The second opposite/insurance company has stated that the accident occurred only due to the accidental fall of the deceased in the well while climbing. The policy does not cover the accident.

5. Based on the averments in the petition and counter statements filed by first and second opposite parties, the Commissioner for Workmen's Compensation has framed four issues:

(i) Whether the accident arose out of and in the course of the deceased's employment under the first opposite party?

(ii) What were the deceased's age and wages on the date of accident?

(iii) What is the amount of compensation and payable to the applicants?

(iv) Who among the opposite parties should pay the compensation thus determined?

The Commissioner for Workmen's Compensation based on the facts of the incident and also the documents filed by both sides, has given a finding that the accident arose out of and in course of the employment, the deceased under the first opposite party. Regarding the second issue also viz, the age and wages of the deceased, it has decided the age of the deceased as 25 years. Based on the details mentioned in the Pay certificate, his monthly salary is taken as Rs.3,843/-, as fixed in G.O.[2D] No.47 Labour Employment (J1) Department dated 01.08.2003 and determined the compensation for a sum of Rs.4,16,793/- .

6. As regards fixation of the liability to pay the compensation, the Commissioner for Workmen's Compensation has discussed that the policy issued by the second opposite party / insurance company is in respect of a motor vehicle fitted in the Rig unit bearing Regn.No.TN-59-Z-477. The said policy contained endorsement No.47 which reads as follows:

"IMT.47 MOBILE CRANES/DRILLING RIGS/MOBILE PLANTS/EXCATATORS/NAVIES/SHOVELS/GRABS/RIPPERS"

It is also observed by the Commissioner for Workmen's Compensation that any liability incurred by the insured arising out of " operation as a tool of such vehicle or of plant forming part of that vehicle or attached thereto" was excluded from the coverage. The second opposite party under the policy, had insured the lorry with the drilling rig mounted on it both of which together and paid the premium at Rs.7,719/- for '' own damage '' for ''liability'' the amount paid was Rs.960/- including break-up details of T.P.Basic Rs.785/- , compulsory P.A to owner-cum-driver Rs.100/- W.C to 3 employees - Rs.75/- .

7. The Commissioner for Workmen's Compensation has observed that the claim has been made on account of the death of the claimant's husband when he was working as a Driver cum Rig Engine Operator in the bore-well lorry which was covered by the policy. The rig and compressor mounted on a lorry and used for drilling cannot be considered as road transport vehicle and further discussed that the insurance policy represents a contract between the insurer and the insured and the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out there. The deceased as the driver of the rig-mounted lorry would have got automatic coverage of insurance under Section 147(1)(b) of the Motor Vehicles Act 1988, had he met with the accident while driving the vehicle or in any contingency in which he worked in the vehicle when it was purely used as vehicle and given a finding that only the first opposite party being the employer of the deceased should pay the amount of compensation determined by the Commissioner for Workmen's Compensation, as the coverage of insurance policy stands limited in view of the exclusive clause under IMP endorsement No.47. Against the said order of the Commissioner in exonerating the liability of the Insurance Company, the appellant has preferred this appeal.

8. Hence, the questions of the law that arise are that whether the award of the Commissioner for Workmen's Compensation passed against the first opposite party is vitiated? and whether the Commissioner has failed to see that the deceased was doing the normal duty at the time of accident and the risk is covered by the policy? and whether the award of the Commissioner for Workmen's Compensation is vitiated in so far as wrongly fixed the liability on the owner and exonerated the Insurance company?

9. On the side of the appellant by referring the IMT 17, which reads as follows:

"IMT 17. Personal Accident cover to paid drivers, cleaners and conductors: (Applicable to all classes of vehicles)"

In consideration of the payment of an additional premium, it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below for bodily injury as herein after defined sustained by the paid driver/cleaner/conductor in the employ of the insured in direct connection with the vehicle insured whilist mounting into dismounting from or travelling in the insured vehicle and caused by violent accidental external and visible means which independently of any other cause shall within six calender months of the occurrence of such injury result in

Details of Injury	Scale of compensation
i) Death	100%
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
iii) Loss of one limb or sight one eye	50%
iv) Permanent Total Disablement from injuries other that named above	100%

Provided always that (1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs..... " during any one period of insurance in respect of any such person. (2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs. (3) such compensation shall be payable only with the approval of the insured name in the policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person.
Subject otherwise to the terms exceptions conditions and limitations of this policy. The capital Sum insured (CSI) per person is to be inserted.

10. The learned counsel for the respondent relied on the decision reported in 2006 (2) CTC 368 (National Insurance Company Limited, Gobichettipalayam, Erode District /Vs/ Arumugham and Others), in which the Appellant is the National Insurance Company, challenged the award of the Commissioner for Workmen's Compensation. The facts of the case are similar to that of the appeal pending before this Court. In the said case also, the deceased was employed as Driller cum Helper in the rig unit fitted on a lorry. The conditions contained in IMT-17 which reads as under:

" IMT-17 Legal Liability to persons employed in connection with the operation and /or maintaining and/or unloading of goods carrying commercial vehicles"

The view taken in this case is that the set of expressions used in Endorsement 17 providing for the persons employed in connection with the operation and/ or maintenance of the goods carrying commercial vehicles will have to be given an expanded meaning to include the lorry with rig unit embedded on it and also with a view that Clause 17 can only be interpreted to include the avocation of deceased as Driller cum Cleaner of the Lorry with the rig unit and the award passed by the Commissioner was justifiable.

11. The learned counsel for the appellant referred another case reported in 2011 (1) TAN MAC 614 (National Insurance Company Limited, Gobichettipalayam /Vs/ Palani Ammal and Others) in which the deceased who was employed in rig unit of lorry died in course of employment and it was clearly discussed that as per IMT Condition 47 Clause (b), it can at best be called a tool of such vehicle, forming part of such vehicle and it is further held that

> " 13. In my view any other construction of Endorsement 17 vis-a-vis the payment of premium relating to a driver and a cleaner would not further the purpose and the intent of the Certificate of Insurance and the coverage made by the Appellant at the instance of the third respondent. In the said circumstances, the set of expressions used in Endorsement 17 providing for the persons employed in connection with the operation and/or maintenance of the goods carrying commercial vehicles will have to be given an expanded meaning to include the lorry with rig unit embedded on it. The cleaner who was engaged in such a lorry with the rig unit would certainly covered by the policy issued by the appellant under Ex.P.4. The construction so made by me on Endorsement No.17, in my view, would be the proper way of determining the application of the said clause, in view of the well known canon of construction to be made as set down by the various decisions relating to the subject".

and in final it is opined that the insurance company is liable to pay under the policy especially when it is admitted that the deceased person was employed in the rig and died in the course of employment and he was employed under the owner and insurance company is liable to pay the policy covers the occupant or the employee. In this appeal, the deceased was working as driver cum rig operator of a rig lorry owned by the first respondent. The deceased Periyasamy was under the employment of first respondent for many years. On the fateful day, after completion of the work in the site, he got down in a well to close down air lock and after doing so, when he was climbing up, he had fallen into the well and sustained severe injury and died. It is pertinent to note that the deceased on that date in continuation of his work went into the well to closed down the air lock in the motor pump and it is a part of his work even when the nature of work is digging the wells and the vehicle is used as a drilling machine. Hence, in view of the expressions used in endorsement 17, the deceased who is the operator of the rig is certainly covered by the policy. Hence, the insurance company is liable to pay and the policy covers the employee who is the deceased.

12. In the result, the appeal is allowed and the Order of the Deputy Commissioner of Labour, Salem dated 30.06.2008 made in W.C.No.802 of 2005 is set aside. The second opposite party/insurance company is liable to pay the compensation determined by the Deputy Commissioner of Labour, Salem. No costs.

13. The Insurance Company/second respondent herein is directed to deposit the said award of Rs.4,19,293/- (Rupees Four Lakhs nineteen thousand two hundred and ninety three only) along with interest at 12% from the date of the accident till the date of actual payment. On such deposit being made, the Deputy Commissioner for Workmen Compensation Salem is directed to transfer the amount directly to the bank account of the claimant/appellant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv

To

1.The Deputy Commissioner of Labour,
Commissioner for Workmens Compensation,
Salem

Copy To:

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.K.Kuppusamy, Advocate, S.R.No.65546

C.M.A.No.2860 of 2009

CP(CO)

rrs 19/11/2018