IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2253 of 2013
and M.P.No.1 of 2013

The New India Assurance Co. Ltd.,
East Costs Chambers,
No.92, G.N.Chetti Road, Thiyagarayar Nagar,
Chennai - 600 017. ... Appellant/4th Opposite party

Vs.

1. Anjalai
2. K. Kamaraj
3. K.Gnanasekaran
4. Soundari
5. K. Ragu
6. Nathiya
7. Nanthini

8. M/s. Ashok Leyland Ltd.,
#19, Rajaji Salai, Chennai - 600 001.

9. The Oriental Insurance Co. Ltd.,
No.115, Prakasam Street, Broadway,
Chennai - 600 118.

10.M/s.Gananatha Transport,
No.1015, Tiruvottiyur High Road,
Chennai - 600 019.

(8th and 9th respondents herein are not necessary parties and are hereby given up)... Respondents/
Applicants 1 to 7
and opposite party 1to3

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 28.02.2013 made in W.C.No.3 of 2010 on the file of the Commissioner for Workmen's Compensation - I (Deputy Commissioner of Labour-I), Chennai.

For Appellant : Mr.C.Ramesh Babu

For R1 to R7 : Mr.K.Suryanarayanan

- - - - -

J U D G M E N T

Aggrieved over the award fastening the entire liability on the Insurance Company in W.C.No. 3 of 2010 dated 28.02.2013 on the file of the Commissioner for Workmen's Compensation – I (Deputy Commissioner of Labour-I), Chennai, the New India Assurance Company has preferred this Civil Miscellaneous Appeal.

2. According to the appellant, they are the insurers of 10th respondent/contractors, who supplied drivers. As per the insurance policy, they are liable to pay only upto Rs.3,000/- and excess amount of compensation shall be paid by the insured as there is no coverage beyond the ceiling. There is no dispute about the accident and the quantum of compensation. On the basis of the grounds raised by the appellant, the following substantial questions of law were framed:-

1. Whether the authority was justified in fixing the income of the deceased as Rs.3,947/- per month based on provisions of minimum wages Act for the drivers as against a sum of Rs.3,000/- paid as wages per month by the 10th respondent herein to the deceased as per the declared wages submitted to the appellant?

2. Whether the appellant herein could be made liable to pay the entire amount of compensation of Rs.2,41,392/- fixed as per the provisions of Sec. 4(1) of W.C. Act, 1923, to the respondents 1 to 7 herein when the appellant herein is liable to pay a sum of Rs.1,81,575/- as per the terms and conditions of the policy entered between the appellant and the tenth respondent herein?

3. Whether the authority was justified in fixing the entire liability against the appellant herein to pay a sum of Rs.2,41,392/- to the respondents 1 to 7 herein?

3. In so far as the first question of law is concerned, the appellant/insurance company claims that the Tribunal has fixed the monthly income of deceased driver as Rs.3,947/- as per the provisions of Minimum Wages Act, whereas, the 10th respondent has paid only Rs.3,000/- per month as wages. When a Statute mandates

that the minimum wages shall be paid to the employees, non-payment of minimum wages itself is violation of law. Only because, the employer pays wages less than minimum wages prescribed by the statute, it will not entitle the appellant to perpetuate an illegality for the purpose of reducing the award of compensation.

4. In so far as the second question of law is concerned, it is the contention of the learned counsel appearing for the appellant that as per the terms and conditions of the policy, they are liable to pay only Rs.1,81,575/- towards award of compensation made by the authority. The balance shall be paid by the insured/employer.

5. The insurance policy has been marked as a document on the side of the claimants vide Ex.A7. On a perusal of Ex.A7, it is seen that the policy is Workmen Compensation policy and it covers 300 drivers employed by the insured. The premium details for the wages less than Rs.4,000/- was taken and appropriate premium was paid. Even though the cash total wages was indicated as Rs.9,00,000/-, there is no specific term that the liability of the insurer is only to extent of Rs.3,000/- as wages per month. The appellant has not let in any evidence before the authority on this aspect.

6. In the absence of any proof, that the coverage is restricted only to the extent of Rs.3,000/- per month, this Court is not able to see any infirmity in the finding of the authority under the Workmen's Compensation Act. Therefore, the second question of law seeking to limit the award of compensation has not been borne out by the records or evidence. Therefore, it is answered in the negative.

7. Since the insurance company covers the employee/insurer under the Workmen's Compensation Act, they are liable to pay the entire award of compensation.

8. The learned counsel appearing for the respondents would contend that the authority below has awarded interest in default of deposit of the award amount. But, as per Section 4-A of Employee's Compensation Act, the claimants are entitled to interest at the rate of 12% per annum from the 31st day of the accident. In such circumstances, the authority ought to have ordered interest from the date it fell due. In the instant case, the accident had taken place on 16.01.2006. Therefore, they are entitled to interest with effect from 16.02.2006. The appellant/Insurance Company is directed to deposit the interest on the award amount at the rate of 12% per annum from 16.02.2006 till the date of deposit.

9. Accordingly, this Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

asi
To

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

2.The Section officer
VR Section High Court Madras

+1 cc to Mr.C.Ramesh Babu Advocate sr 19099
+1 cc to Mr.K.Suryanarayanan Advocate sr 19326

C.M.A.No.2253 of 2013
and M.P.No.1 of 2013

br(co)
aa16/04/2018