

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2325 OF 2012

M/s.Oriental Insurance Company Ltd. ... Appellant

-vs-

1.C.Raju

2.P.Palanisamy

... Respondents

Appeal against the order, dated 12.03.2012, passed in W.C.No.362 of 2005, on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem.

For appellant : Mr.R.Sivakumar

For respondents : Mr.R.M.D.Nasrullah

JUDGMENT

The challenge in this appeal is to the award passed in W.C.No.362 of 2005, dated 12.03.2012, on the file of Commissioner for Workmen's Compensation, Salem.

2. Insurance company is the appellant. The contention of the insurance company is that in the F.I.R., the name of the claimant is mentioned as Cook; the policy does not cover Cook, employed by the vehicle owner, and, therefore, they are not liable to pay compensation.

3. On the contrary, learned counsel appearing for the first respondent-claimant would submit that the claim itself is on the basis of the employment that the claimant worked as Cook-cum-Loadman and his employment status was also affirmed by the second respondent-employer that the claimant was working as Cook-cum-Loadman. While deposing before the authority, a categorical evidence was made by the claimant that he was working as Loadman-cum-Cook and that the employees do cooking work in rotation. When the appellant-insurance company crossexamined the claimant also, there was a categorical statement by the claimant that he was working as Cook-cum-Loadman under the second respondent. In the evidence of R.W.1-

employer, he would state that the claimant was working as Coolie, by doing loading and unloading work, and that he also did cooking work. As per the insurance policy, three workmen are covered by it. Therefore, the insurance company is liable to pay compensation.

4. In this appeal, the following substantial questions of law are formulated :

1. Whether the learned Deputy Commissioner is correct in coming to the conclusion that the first respondent herein was a Cook/Loadman in the lorry bearing registration No.TN-39-F-5776 under the second respondent, and sustained injuries during the course of his employment ?

2. Whether the learned Deputy Commissioner is correct in fixing the liability on the appellant when in the first information report, the first respondent's name has been mentioned as a Cook ?

3. Whether the learned Deputy Commissioner is correct in fixing the liability on the appellant, when the second respondent has violated the terms and conditions of the policy Exhibit R-1 ?

4. Whether the learned Deputy Commissioner is correct in fixing the loss of earning power at 30% which has not been assessed as per Schedule-I Part-II of the Workmen's Compensation Act ?

5. Whether the learned Deputy Commissioner is correct in assessing the loss of earning power at 30%, when AW-2 assessed the physical disability only ?

6. Whether the learned Deputy Commissioner is correct in awarding interest at the rate of 12% per annum from the date of accident, if the insurance company/appellant is not depositing the compensation amount within 30 days from the date of receipt of the order copy ?

5. Considering the material available before this Court, it is seen that the claimant let in evidence as P.W.1 and doctor as P.W.2 to prove the injuries suffered by the claimant and marked Exs.A-1 to A-6. There is clear evidence by P.W.1 as well as the employer that the claimant was working as Coolie, doing loading and unloading work, and also cooking work. As per the policy under the Workmen's Compensation Act, three employees are covered. When the employer himself admits that the claimant was working as Coolie under him, it is not open to the insurance company to deny his employment, classifying him as Cook, not

covered under the policy. The authority below has found ample evidence that the claimant was working as Loadman and covered by the insurance policy. I also do not find any contra evidence to disprove the claim. Therefore, the impugned award of the authority under the Workmen's Compensation Act is confirmed and the questions of law raised by the insurance company are answered in the affirmative and against the appellant.

6. In the result, this Civil Miscellaneous Appeal is dismissed. The first respondent-claimant is entitled to withdraw the compenstion, already deposited by the insurance company, along with accrued interest. No costs. Consequently, the connected M.P.No.1 of 2012 is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dixit
To

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

+lcc to Mr.R.Sivakumar, Advocate Sr.21252
+lcc to Mr.R.M.D.Nasrullah, Advocate Sr.21647

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