IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.3445 of 2010
and M.P.No.1 of 2010

The Branch Manager
National Insurance Company Ltd.,
Branch Office - 1,
Thanthai Periyar Complex,
Salem - 636 001. ... Appellant/ 2nd Respondent

vs.

1. Maharajan ...1st Respondent/Petitioner
2. The Secretary
Sri Vidhya Mandhir Secondary School,
Sivaji Nagar, Salem 636 003. ...2nd Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act (Act 111/1923) to set aside the award passed by the Workmen Compensation Commissioner, Salem in W.C.No.670 of 2005 dated 30.07.2010.

For Appellant : M/s.N.B.Surekha

For Respondents : No appearance for R1
M/s.Zeenash Begum
for Mr.V.Rajesh for R2

J U D G M E N T

Challenging the award of compensation made in W.C.No.670 of 2005 dated 30.07.2010 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem, the National Insurance Company Limited has preferred this appeal.

2. The Insurance Company has filed the above appeal on the following questions of law:-

a. Whether the Workmen Commissioner is right in accepting the employment of the claimant as a Conductor with the 1st opposite party, when no Conductor licence as laid down under Section 29 of the M.V.Act had been obtained?

b. Whether the Workmen Commissioner is right in fixing the liability upon the 2nd opposite party/Insurance Company when the employment of conductor without licence is barred under the statute?

c. Whether the learned Workmen Commissioner is right in fixing the liability upon the appellant insurance company when premium had been paid only to cover one employee, it goes to say for driver of the bus?

3. The claimant was working as a conductor in a school bus. On 14.07.2004 when he was instructed to look at the back of the bus for reversing, he fell down and the wheels of the bus ran over his legs and sustained injuries. FIR was registered on the statement given by the claimant at the hospital on 17.07.2004. The Motor Vehicle Inspector inspected the vehicle on 21.07.2004 and gave his report. On the basis of the injuries sustained by the claimant, he has preferred the petition for claiming compensation of Rs.5 lakhs. The first respondent has admitted the employment of the claimant and the accident. The second respondent denied his liability to pay compensation. According to the Insurance Company, the authority, after considering their elaborate oral and documentary evidence, has erroneously held that the claimant without valid conductor licence is entitled to compensation and the Insurance Company is liable to pay the same by the Insuring the Insurance Policy.

4. Heard both sides.

5. On a perusal of the Insurance Policy it is seen that it is a package policy for a vehicle carrying passengers on commercial basis. The Insurance Policy covers the liability to 20 passengers under one employment. According to the learned counsel for the appellant, employee means the driver and not the conductor. In support of her contention she relied on the judgment reported in (2003) 10 Supreme Court Cases 664 in the case of Ramashray Singh Vs. New India Assurance Co.Ltd., and others which was followed by a judgment reported in II (2005) ACC 795, 2006ACJ2073, 2005(2) Kar LJ488, 2005(2) KCCR893 in the case of New India Assurance Company Limited Vs. Danappa and another. As per the judgments, the Insurance Policy covers only the person or classes of persons specified in the policy. On the contrary, the Insurance Policy covers loss sustained by the insured up to the insured amount irrespective of the actual loss suffered. The Hon'ble Supreme Court while deciding the appeal held that the policy shows that premium was paid for 13 passengers and one driver and there is no payment of premium for

a conductor and therefore the Insurance Company shall not be made liable for paying compensation. But on perusal of the Insurance Policy pertaining to the case on hand, as stated supra, it is seen that the Insurance Policy is a package policy which is liable for 20 passengers and one employee under Workmen Compensation Act. It is well settled that when a policy covers the employee under Workmen's Compensation Act and additional premium is paid for that purpose, Insurance Company is liable to indemnify the insured on the death of the employee. In the instant case, the Insurance Policy covers one employee under Workmen Compensation Act and additional premium was also paid. The Conductor is also an employee and there is no specific mention excluding the driver or the conductor in the terms and conditions of the policy but it is general, which includes the conductor also.

6. In such circumstances, the Insurance Company is liable to pay the compensation for the conductor who was admittedly employed under the first respondent. This Court is not inclined to accept the contention raised by the learned counsel for the appellant and I do not find any infirmity in the order passed by the authority. Accordingly the order passed by the authority under Workmen Compensation Act dated 30.07.2010 is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To
1.The Dy.Commissioner of Labour
Commissioner Workmen Compensation, Salem.

+1cc to Mr.V.Rajesh, Advocate S.R.No.18890

+1CC to M/S. N.B.Surekha, Advocate S.R.No.18760

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RSY(CO)

RRK(02/05/2018)