

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2800 of 2013

and M.P.No.1 of 2013

National Insurance Co.Ltd.,
No.110, Jawaharlal Nehru Street,
Puducherry.

... Appellant/2nd Opposite Party

vs.

1. Balakrishnan
2. Boopalan
Proprietor,
M/s.Lakshmi Borewell,
Ananda Nagar, Thavalakuppam,
Puducherry District.

... Respondents/Applicant,
1st Respondent

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the award dated 09.05.2013 and made in W.C.No.382 of 2010 on the file of the Commissioner for Workmen's Compensation -2, Deputy Commissioner of Labour-2, Teynampet, Chennai 600 006.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.S.Vijaya Kumar for R1

No appearance for R2

सत्यमेव जयते
J U D G M E N T

Challenging the award of compensation made in W.C.No.382 of 2010 dated 09.05.2013 on the file of the Commissioner for Workmen's Compensation -2 / Deputy Commissioner of Labour - 2. Teynampet, Chennai 600 006, the National Insurance Company Limited has preferred this appeal.

2. The Insurance Company is the appellant before this Court. According to the Insurance Company, they are not liable to pay the compensation for the persons who are employed in a rig unit mounted on lorry. The Insurance Policy covers only the accidents occurred out of plying the vehicle and not for the operation of

the rig, therefore, they are not liable to pay the compensation.

3. The case of the claimant is that he was employed under the second respondent, who is the owner of the vehicle bearing Registration No.TNG-5573. On the instructions from his employer, the claimant was doing bore well work on 21.04.2010, in which he sustained injuries in his right hand and thereafter he was admitted to hospital. In the accident, his right hand middle four fingers were amputated and he could not do any work thereafter. On the basis of the injuries sustained, he laid the claim petition. The second respondent employer had admitted the employment status and the salary/wages paid to the claimant. In view of the policy coverage, the second respondent pleaded that the Insurance Company is liable to pay the compensation. The Insurance Company denied all the averments made in the claim petition and contended that they are not liable to pay the compensation for the persons who are working in rig unit mounted on the motor vehicle insured by them.

4. After elaborately analysing the oral and documentary evidence, the authority has come to a conclusion that the accident had taken place during the course of employment and in view of the coverage of Insurance Policy, the Insurance Company is liable to pay compensation.

5. Challenging the award fastening the liability on the Insurance Company, the present appeal is filed.

6. Heard both sides.

7. On a perusal of the materials available before this Court, it is clear that the claimant was employed under the second respondent, who is the owner of the vehicle. It is also admitted that the vehicle was covered by an insurance policy which is a comprehensive one. The Insurance Policy covers two employees under workmen's Compensation Act. The additional premium of Rs.50/- was also paid under the schedule for premium. During cross-examination, RW1 would admit that the Insurance Policy marked as Ex.R.2 covers compensation under workmen compensation Act to two employees. It does not specifically state that two employees under policy coverage are the driver and the cleaner. It generally states that it is only two employees. The authority below has considered the point that in the absence of any specific exclusion clause, the employees of the owner of the vehicle whether it is a lorry or rig mounted on the lorry are covered by Insurance Policy and awarded compensation. In a similar circumstances, this court in the case of National Insurance Company Ltd., Vs Senniappan and others reported in 2007 (4) CTC 374 has categorically held that :-

As pointed out above, Ex.B1-Insurance Policy

is a comprehensive policy and the vehicle insured is 'Ashok Leyland Rig Unit' and the vehicle itself has been insured for the value of Rs.6,50,000/- by paying a premium of Rs.3,518/- and a part from that, as pointed out above, separate premium has been paid covering the risk to the employees and there is no exclusion clause by incorporating Endorsement No.37. When the deceased was admittedly operating the Rig as a Rig operator under the insured and the risk is covered by the payment of extra premium the Insurer is liable to indemnify the insured though the vehicle was not in use as a motor vehicle.

8. From the reading of the judgment, it can be seen that in the absence of any exclusion clause excluding employees other than the driver and the cleaner, the Insurance Company is liable to pay the compensation. In the instant case also RW1 the Officer of the Insurance Company has clearly deposed that the policy covers two employees under Workmen's Compensation Act. There is no exclusion clause that the driver and cleaner are only entitled to compensation and other workmen are not entitled. Therefore, in the absence of exclusion clause the claimant, who is also employee under the second respondent, owner of the vehicle, is covered by the Insurance Policy. The contention of the Insurance Company is that they are not liable to pay the compensation to the employee other than the driver and the cleaner is not sustainable. Further even assuming that the rig is mounted on the lorry, as held by this Court in judgment in the case of National Insurance Company Ltd., Vs Senniappan and others reported in 2007 (4) CTC 374 that the Insurance Company is liable to pay the compensation in view of the comprehensive Insurance Policy.

9. Therefore, I do not find any infirmity in the order passed by the authority and the appeal, on merits, needs no consideration and accordingly the same is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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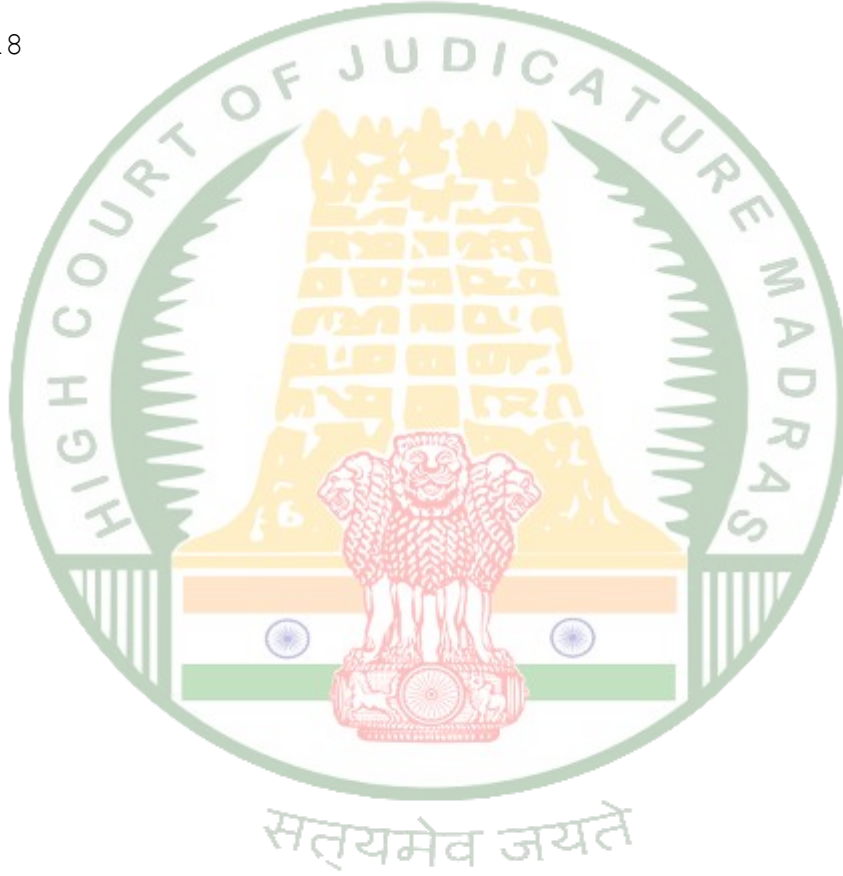
1. The Commissioner for Workmen's Compensation -2, /
Deputy Commissioner of Labour-2,
Teynampet, Chennai 600 006.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.18887

+1cc to Mr.S.Vijaya Kumar, Advocate, S.R.No.19040

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GJII (CO)
CS/06/04/18



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