IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.648 of 2007 and
M.P.Nos.1 of 2007

The Oriental Insurance Company Ltd.,
Thiruchengode. ..Appellant/Respondent

Vs.

1. Thailammal ..1st Respondent/Petitioner

2. Sri Senthil Kumaran Fast Drillers,
58, Hosur Main Road,
Madiwala, Bangalore - 68. ..2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 17.04.2006 in W.C.No.538 of 2004 passed by the Commissioner for Workmen's Compensation, Salem.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.N.Manokaran

J U D G M E N T

The Insurance Company has preferred this Civil Miscellaneous Appeal against the award passed by the Commissioner for Workmen's Compensation, Salem, in W.C.No.538 of 2004, dated 17.04.2006 .

2. The case of the claimant is that the son of the claimant, Elengovan had succumbed during the course of employment in an accident, that had taken place on 29.07.2004. The deceased was working as a Driller in Rig bearing registration No.KA/05-Z-5531 at Andhra Pradesh. The employer remained absent and the appellant/Insurance Company had admitted that the vehicle is covered by the insurance policy and a separate policy was also issued for those who are not covered with the policy for covering the driller and other categories. The age and the monthly income have been objected by the insurance company.

3. According to the Insurance Company, the deceased was covered under the Group Personal Accident Policy and therefore, he was not covered by the Motor Vehicles Policy. Since a sum of Rs.1,00,000/- as per the coverage under Group Personal Accident Policy was paid, the claimant is not entitled to get the compensation under the Motor Vehicles Act.

4. The Commissioner for Workmen's Compensation has held that the coverage under the Group Personal Accident Policy will not exclude the deceased from getting benefit under the policy taken under the Motor Vehicles Act and on that ground, awarded a compensation of Rs.3,82,747/-.

5. Only on limited ground that they are not liable to pay compensation on the additional policy, the Insurance Company is before this Court.

6. Mr.R.Sivakumar, learned counsel appearing for the Insurance Company vehemently contended that the Driller in Rig vehicle is specifically covered in the Group Personal Accident Policy and he was not covered under the regular policy. The policy was issued for the purpose of covering those who are not covered by the regular policy. Therefore, once separate policy is issued for covering the driller and other categories, particularly, technical person, the compensation shall be limited only under the separate policy and it could not be expanded for further compensation.

7. On considering the argument, the learned counsel appearing for the respondents would produce the judgment of this Court decided in C.M.A.No.1024 of 2005 (The Oriental Insurance Company Limited, Namakkal Vs. Parvathi and five others), dated 08.10.2015, wherein, the similar issue was discussed. This Court while deciding that issue has observed that the payment of Rs.1,00,000/- paid under Group Personal Accident Policy has nothing to do with the payment of compensation under the policy in question. The relevant portion of the judgment reads as under:-

> 9. As rightly pointed out by the learned counsel for the respondents 1 to 5, there were two policies taken by the employer, one for the vehicle and another for the drilling machine separately. Apart from this, the employer has also taken a Group Personal Accident Policy. As far as the vehicle in question is concerned, the employer has separately paid a sum of Rs.175/- towards premium in which the words "legal liability employees/Drivers" is prominently mentioned. It is not mentioned as if the policy covers the legal liability of the employees/loadman, but it is prominently mentioned as "legal liability employees/drivers". In the present case, admittedly, the deceased

died during the course of his employment while doing drilling work during which the drilling unit suddenly fell on him. Consequently, it has to be held that the deceased was not a technically skilled person, as contended by the insurance company and he was only an employee and/or driller doing drilling work under the first respondent. Therefore, as rightly pointed out by the competent authority, the policy also covers Driller and consequently the claimants are entitled to payment of compensation under the Workmen Compensation Act. As rightly pointed out, the payment of Rs.1,00,000/- paid under the Group Personal Accident Policy has nothing to do with the payment of compensation under the policy in question. Consequently, I hold that all the three questions of law framed for consideration in this appeal are answered against the insurance company and in favour of the claimants/respondents 1 to 5.

8. In that case also, the compensation was awarded by the authority under the Motor Vehicles Act.

9. I also find that there is no exclusion clause that the policy will not cover the Driller. When the policy is taken covering all the employees, that includes driver, cleaner, load man and other employees. In the absence of any specific exclusion, the policy shall be construed to cover all the employees.

10. I concur with the finding of the learned Judge in the judgment dated 08.10.2015 in C.M.A.No.1024 of 2005. The award passed by the authority in W.C.No.538 of 2004 dated 17.04.2006 on the finding that there is no bar for awarding compensation under the policy in question also is very much correct and is hereby confirmed.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation,
Salem.

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

+ 1 cc to Mr. R. Sivakumar, Advocate Sr.5982
+ 1 cc to Mr. N. Manokaran, Advocate Sr.6100

EV(CO)
EU(10/04/2018)