IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.3503 OF 2013
AND M.P.NO.1 OF 2013

The New India Assurance Co. Ltd.,
No.114, Main Road,
Nellikuppam - 607 105.
Cuddalore District. ... Appellant

Vs.

1.Haribalan
2.S.Elavarasan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 17.07.2013 passed in W.C.No.78 of 2009 by the Commissioner for Workmen's Compensation - II (Deputy Commissioner of Labour - II) Chennai - 600 006 and the same has been received by the appellant on 29.10.2013 and praying to set aside the same.

For Appellant : Mr.C.Ramesh Babu

For Respondent-1 : Mr.S.Vijayakumar

For Respondent-2 Served : No Appearance

J U D G M E N T

Aggrieved over the award passed in W.C.No.78 of 2009 dated 17.07.2013 on the file of the Commissioner for Workmen's Compensation - II (Deputy Commissioner of Labour-II) Chennai, the Insurance Company has preferred this Civil Miscellaneous Appeal.

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

1. Whether the appellant herein could be made liable to pay the compensation as per the terms and conditions of the policy entered between the appellant and the second respondent herein when one seat is provided for the Tractor?

2. Whether the authority was justified in fixing the liability against the appellant herein to pay a sum of Rs.2,28,733/- to the 1st respondent herein?

3. According to the claimant/first respondent, on 10.10.2008, while he was working as a loadman in a Tractor bearing Registration No.TN31-H-1491, the driver of the vehicle drove the vehicle in a rash and negligent and zig zag manner at a high speed and hit the ridge and the claimant was thrown out of the Tractor and the back wheel ran over his left leg. In the said accident, the claimant sustained compound fractures on femur of the left leg and multiple grievous injuries all over the body.

4. The authority under Workmen's Compensation Act, after considering the elaborate evidence both oral and documentary, has arrived at a finding that the claimant is entitled to compensation and the Insurance Company is liable to pay the compensation, as the vehicle of the second respondent is covered by the insurance. Considering the grievous nature of the wounds and the disability suffered by the claimant, the authority has fixed 50% as loss of earning capacity and awarded a sum of Rs.2,28,733/- (Rupees Two lakh twenty eight thousand seven hundred and thirty three only) as compensation.

5. According to the Insurance Company, there is no policy coverage for a loadman. The insurance policy, though covers Tractor, it is specifically stated in the policy that workmen compensation coverage is in respect of only one employee. The vehicle involved in the accident being a Tractor, not a transport vehicle, the employee covered under the policy is only the driver and nobody else. Therefore, in the absence of any policy coverage specifically mentioning the load woman, the Insurance Company is not liable to pay any compensation.

6. Further, without prejudice to his contention, the learned counsel appearing for the Insurance Company would also submit that the physical disability will not be a ground for assessing the loss of earning capacity. The injuries will not reduce any earning capacity and at the maximum as per the schedule, the loss of earning capacity should be fixed at 25%. The authority has erroneously fixed the same at 45% without any clear finding in this regard.

7. Heard the learned counsel appearing for both parties.

8. On a perusal of the records, it is seen that the insurance policy is marked as Ex.R2, and the policy discloses that it is the package policy and premium is paid for the

trailer also. Apart from that, coverage under the Workmen Compensation to one employee and the appropriate premium is also paid under Section 147 of the Motor Vehicles Act, 1988. The driver is statutorily covered by the insurance policy. In that, specific coverage to the workman was given by the Insurance Company, and it shall denote any workman engaged in the operation of motor vehicle.

9. In the instant case, the vehicle insured is the tractor and trailer attached to it. In so far as the tractor is concerned, the driver is automatically covered in view of the statutory requirement. So far as the trailer is concerned, the policy covers an employee under the Workmen's Compensation Act. Once the coverage is given under the Workmen's Compensation Act, naturally the same denotes the employee other than the driver. In such circumstances, the finding of the authority under Workmen's Compensation Act that the claimant, who worked as a load man, is also covered under the insurance policy is not erroneous.

10. In a judgment of a Division Bench of Karnataka High Court in MOUNESH VS. THIMMANNA AND ANOTHER [2011 ACJ 2054] it has been observed as under:-

> "4. ...On close reading of the notification the trailers at item No.(vi) are categorised as transport vehicles. The trailer is not an automobile, unless it is attached to a tractor or any other automobile vehicle. The tractor at item (x) in column No.2 is categorised as a non-transport vehicle. At item No.(ix) of column No.2 trailers to carry personal effects are also categorised as non-transport vehicles. The tractor with a trailer used for transportation of agricultural produce and other goods would be very much a goods vehicle. Besides, such a tractor and trailer would be a goods carriage within the meaning of Section 2(14) of the Motor Vehicles Act, in which event the risk of workmen/loaders of the tractor-trailer is necessarily to be covered under Section 147 as an Act Policy without collecting any additional premium. In that view of the matter, the insurer in this case would be liable to be pay the entire compensation in terms of the Workmen's Compensation Act.

11. The learned counsel for the appellant relied on a judgment of this Court in NATIONAL INSURANCE COMPANY LIMITED,

VS. GOBICHETTIPALAYAM VS. GURUSWAMY AND OTHERS [2011 (1) TN MAC 602] wherein it is held that when the claimants were travelling in the goods vehicle, having zero seating capacity, and when the policy prohibited carrying of anybody excepting the driver, then the Insurance Company is not liable. But this case will not be applicable to the case on hand as the insurance policy covers one employee under Workmen's Compensation Act. Unless there is specific exclusion excluding the load woman and that the policy covers only the driver, it cannot be said that the policy does not cover the injured employee.

12. Further, this Court in THE DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., VS. KALAIVANI AND OTHERS [CMA NO.559 OF 2015 DECIDED ON 22.11.2017] has held as follows:

> "10.It is not in dispute that the 5th respondent had insured the vehicle with the appellant/Insurance Company under Farmers' Package Insurance, which is valid from 20.10.2010 to 19.10.2011. The certificate of insurance was marked as Ex.P2. The FIR was marked as Ex.P1, the copy of the RC Book was marked as Ex.P3, Postmortem report was marked as Ex.P1. Considering the oral and documentary evidences, the Additional Commissioner came to the conclusion that the deceased had died only due to the injuries sustained by him in the accident that had occurred on 25.06.2011. When the deceased had died in the course of employment, his dependants are entitled for compensation. The Division Bench of Karnataka High Court in the judgment reported in 2011 ACJ 2054 [Mounesh Vs. Thimmanna and another] held that the Tractor with a Trailer used for transportation of agricultural produce and other goods would be very much a goods vehicle. Besides, such a Tractor and Trailer would be a goods carriage within the meaning of Section 2(14) of the Motor Vehicles Act, in which event the risk of workmen/loaders of the Tractor-Trailer is necessarily to be covered under Section 147 as an Act Policy without collecting any additional premium. In that view of the matter, the Karnataka High Court held that the insurer would be liable to pay compensation in terms of the Workmen's Compensation Act. In the judgment reported in 2013 (2) TN MAC 620, this Court held that though the deceased was working as a cleaner in the Tractor at the time of the accident and

no premium was paid to the cleaner under the policy of the above vehicle, when the Tractor was used for unloading the sand in the land belonging to the owner of the vehicle, it has to be construed that loading and unloading in the agricultural field by the Tractor has to be part of the agricultural work. Therefore, this Court held that the Insurance Company is liable to pay compensation, though no separate premium was paid in respect of the cleaner under the Policy. "

13. In the instant case, as stated supra, the policy is a package policy and there is a specific coverage for employees. In the absence of any exclusion clause to the contrary, I have no hesitation to hold that the insurance covers the claimant also.

14. In respect of the contention with regard to the loss of earning capacity is concerned, the claimant has proved the disability suffered by him through Ex.P2, Ex.P6 and Ex.P7. On a perusal of the wound certificate, Ex.P6, it is seen that the claimant has suffered fracture on femur of the left leg and multiple grievous injuries. The P.W.2, Doctor, has assessed the disability at 52% and let in evidence. By virtue of these injuries, no doubt, he had lost strength to continue his avocation, not only as load man, but also in the regular course of life.

15. Considering this disability suffered, the authority under Workmen's Compensation Act has fixed the loss of earning capacity at 45%. I do not find any infirmity in the finding of the authority. Therefore, the substantial questions of law raised by the appellant/Insurance Company are answered in the negative and the order dated 17.07.2013 passed in W.C.No.78 of 2009 by the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai, under the Workmen's Compensation Act, 1923, is hereby confirmed.

16. In the result, this Civil Miscellaneous Appeal is dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Commissioner for Workmen's Compensation - II
(Deputy Commissioner of Labour - II)
Chennai - 600 006.

2.The Section Officer, (2 copies)
V.R.Section,
High Court Madras.

+1cc to Mr.S.Vijayakumar, Advocate, sr.no.13760

+1cc to Mr.C.Rameshbabu, Advocate, sr.no.13772

C.M.A.NO.3503 OF 2013

GJ(CO)

RRK(04/06/18)