

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3088 of 2006
and M.P.No.1 of 2006
and M.P.Nos.1 & 2 of 2007

M/s.National Insurance Co.Ltd.,
Mettupalayam
Coimbatore District. ... Appellant /2nd Respondent
Vs.

1. Kalaivani
2. Minor Kavitha (Represented by her mother R1)
3. Munian alias Ponnuswamy
4. Pavayee
5. Kuppan
6. Kanthamani ... Respondents 1 to 6/ 1 to 6 Petitioners
7. K.Mani ...
Respondent 7/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, (Act 111/1923), to set aside the award passed by the Workmen Commissioner, Salem - 7 in W.C.No.127 of 2004 dated 20.07.2006.

For Appellant : Ms.N.B.Surekha

For Respondents : M/s.Mythily Suresh
Mr.T.L.Thirumalaisamy

J U D G M E N T

Challenging the award passed by the Commissioner for Workmen Compensation, Salem - 7 in W.C.No.127 of 2004 dated 20.07.2006 the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. According to the Insurance Company, the challenge is only on the liability to pay the compensation. The authority has passed order that the Insurance Company is liable to pay the compensation by following the judgment of this Court reported in 2006 (2) CTC 368 in the case of National Insurance Company Limited, No.7, Raja Street, Gobichettipalayam, Erode District. Vs. Arumugham and others.

3.The Insurance Company has filed the above appeal on the following questions of law

1. Whether the learned Workmen Commissioner is right in fastening the liability upon the appellant herein, when there is no contract of indemnity with the seventh respondent herein to cover his employees.

2. Whether the learned Workmen Commissioner is right in applying the decision reported in 2006(2) CTC page 368 when the facts of the case is entirely different and when there is no insurance.

4. According to the Insurance Company, policy which covers the vehicle is only a motor vehicle policy covering third parties, in other words, a Motor Vehicle Act policy does not cover any compensation under Workmen's Compensation Act. Therefore, the liability ought not have been imposed on the Insurance Company.

5. The matter has to be decided on a narrow compass on the issue of liability alone, and not on other issues.

6. On a perusal of the Insurance policy covering the vehicle bearing Reg.No.TN.28-6265 the policy does not cover any other additional coverage by paying additional premium. In the absence of coverage under the policy, it does not cover any additional premium liability. The insurance is only with respect to the third parties alone and it will not cover any other liability. In the case relied upon by the Authority reported in 2006 (2) CTC 368 (National Insurance Company Limited, No.7, Raja Street, Gobichettypalayam, Erode District. Vs. Arumugham and others) includes the condition Nos.17 & 37 which covers the workers also. In such circumstances, the Court held that the claimants therein also entitled to compensation. But, in the instant case, there is no such conditions attached to the Insurance Policy and it is purely an Motor Vehicle Policy and the incident based on which the claim is made is not a motor vehicle accident but due some other work which is done for the insured/7th respondent. Under such circumstances, this Court holds that the Insurance Company is not liable to pay the compensation as it is not covered under the Insurance Policy. In such a view of the matter, the employer viz., 7th respondent alone is liable to pay the compensation amount. The order passed by the authority holding that the policy covers the liability is also erroneous and accordingly, the same is set aside in respect of liability portion alone.

7. In view of the above findings, it is obvious that the employer alone is liable to pay compensation. Accordingly, this Court directs the 7th respondent/employer to pay the compensation amount/liability as per Workmen's Compensation Act

as awarded by the authority Workmen Compensation Act, along with interest payable as per the award.

8. With the above directions, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To
1. The Workmen Commissioner,
Salem - 7

copy to

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

+lcc to Ms.N.B.Surekha, advocate sr.no.13586

+lcc to Mr.T.L.Thirumalaisamy, Advocate sr.13797

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