IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3594 of 2006

M/s.Ragupathy Brick Works,
Rep. by its Managing Partner,
52, Ganapathy Naidu Street,
Chennai - 30. ... Appellant

Vs.

1. S.Veeraraghavan

2. The National Insurance Co. Ltd.,
   Anna Salai, Chennai - 2. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 04.08.2006 in W.C.No.86 of 2004 passed by the Commissioner for Workmen's Compensation - I (Deputy Commissioner of Labour), Teynampet, Chennai - 18.

For Appellant : Mr.R.Bharath Kumar

For 2nd Respondent : Ms.Srividya

J U D G M E N T

Challenging the award of compensation fixing the liability on the employer despite the insurance coverage, by the Commissioner for Workmen's Compensation - I (Deputy Commissioner of Labour), Teynampet, Chennai, in his order dated 04.08.2006 in W.C.No.86 of 2004, the employer has preferred this Civil Miscellaneous Appeal.

2. The accident, claim, quantum of compensation are not disputed in the appeal. The authority, under Workmen's Compensation Act, has held that in view of cancellation of insurance policy, the employer is liable to pay the compensation.

3. According to the appellant, they have taken valid insurance policy and that was periodically renewed till the date of disposal of the Workmen's Compensation. In such condition, it will not absolve the Insurance Company from its liability.

4. This Civil Miscellaneous Appeal has been admitted on the following substantial question of law:-

> "Whether the Commissioner can review his own award invoking the power conferred under Section 114 of C.P.C."

4 (a). Though the appeal was admitted on the above question of law, both the sides focused their attention to the following question of law. Hence, this Court proceeded to decide the appeal on the following question of law:-

> "Whether the cancellation of the contract of Insurance would absolve the Insurance Company from liability even in a case where the company fails to communicate the dishonour of the cheque to the insured."

5. The learned counsel appearing for the appellant would contend that they had taken a policy and it was marked as Ex.A4 by the claimant. According to them, the said policy was renewed year-after-year and therefore, the Insurance Company is liable to pay compensation.

6. Per contra, the learned counsel appearing for the Insurance Company would vehemently contend that the cheque issued by the insured was dishonoured and therefore, the policy given in favour of the insured was cancelled. To prove the same, the dishonoured cheque, receipt for cheque, policy cancellation memo and register containing the extracts of dishonour were marked as Exs.R1 to R4. Therefore, once cheque is cancelled, the insured is not entitled to have coverage and the insurance company is not liable to pay compensation. In the absence of policy coverage, the finding of the Tribunal that the employer is liable to pay compensation is very much correct.

7. I have heard the rival contentions made by the learned counsel appearing for both parties

8. From a perusal of the materials on record, the accident is proved and there is no dispute about quantum of compensation. The dispute revolves around the liability to pay the compensation. As far as the insurance policy is concerned, there is no denial by the Insurance Company that it was periodically renewed till 2006.

9. The learned counsel appearing for the Insurance Company would strongly rely on Exs.R3 and R4, which clearly shows that on account of dishonour of cheque, the policy was cancelled and the cancellation is proved by Ex.R3. The dishonour is also proved by Exs.R1, R2 and R4. Therefore, once a policy is cancelled, they are not liable to pay compensation.

10. But, in my considered opinion, when there is contract between the parties, then the cancellation of the contract should be made known to the other party. In the instant case, whether the cancellation of policy was made known to the appellant/insured is not proved by the authority.

11. On a perusal of Ex.R3, policy cancellation memo, it is seen that no date is mentioned. Ex.R4, register containing the extracts of dishonour also does not show that the cancellation was informed to the insured and there is no evidence to show that this cancellation of the policy was communicated to the insured. In the absence of any evidence, it shall be presumed that the policy was in force. The policy was taken on 22.03.2000. The accident had taken place on 08.04.2000. Till such time, there was no communication of cancellation of the policy. Apart from this, there is no denial of the fact that the said policy was periodically renewed year-after-year. So any insurance policy which had been cancelled would not be renewed without payment of premium. When insurance premium is not paid, the insured should take a new policy and the insurance company would not renew the policy. The renewal of policy would go to show that the existing policy was renewed and the contention that it was cancelled may not be a correct fact. Therefore, the presumption is that the policy was in force on the date of an accident. Even assuming that the policy was cancelled, it should be deemed that it was in force till it was communicated to the insured.

12. The Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. V. Laxmamma and others reported in 2012 ACJ 1307 held that even in case, the policy is cancelled, the Insurance Company will be held liable till the date of communication. The relevant paragraph of the judgment reads as under:-

> 20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period 16.04.2004 to 15.04.2005 towards which premium was paid through cheque on 14.04.2004. The accident occurred on 11.05.2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13.05.2004 on the ground of dishonour of cheque which was received by the owner on 21.05.2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.

13. In the instant case, there is no proof of communication of cancellation of insurance policy, to the appellant at all. But, the conduct of insurance company in renewing the policy would go to show that there was no cancellation at all. Accordingly, the question of law is answered against the insurance company. In such circumstances, the finding of the authority under the Workmen's Compensation Act that the employer is liable to pay compensation is erroneous and unsustainable.

14. Therefore, the award dated 04.08.2006 made in W.C.No.86 of 2004 by the Commissioner for Workmen's Compensation – I (Deputy Commissioner of Labour), Teynampet, Chennai, is set aside insofar as it fixes the liability on the employer. The award is modified and the liability to pay the compensation is fixed on the insurance company. In view of the above finding that the Insurance Company is liable to pay compensation, a consequential direction is issued to the Insurance Company to deposit the award of compensation along with interest @ 12% per annum from the date it fell due, within a period of six weeks from the date of receipt of a copy of this order.

15. With the above directions, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asi

To

The Commissioner for Workmen's Compensation - I
(Deputy Commissioner of Labour),
Teynampet, Chennai - 18.

Copy to

The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.R.Bharathkumar, Advocate Sr.15645

C.M.A.No.3594 of 2006

ca[co]
srg 06/07/2018