



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.569 of 2016

P.Thanga Piratty

... Appellant/Petitioner

vs.

1. T.Maharajan

2. The New India Assurance Co. Ltd.,
Thruvananthapuram Road,
Palayamkottai,
Tirunelveli-2.

... Respondents/Respondents

Prayer: The appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order passed in W.C.No.131 of 2005, dated 29.12.2006 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Tirunelveli.

For Appellant : Mr.A.Joseph Jawahar
For R2 : Mr.K.Murugesan

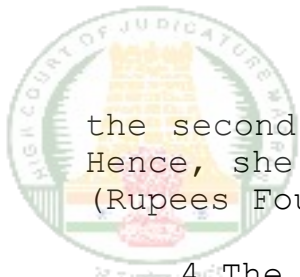
JUDGMENT

Being aggrieved over the award passed in W.C.No.131 of 2005 by the Commissioner for Workmen's Compensation(Deputy Commissioner of Labour), Tirunelveli, the appellant has filed this appeal.

2.The appellant is the claimant in W.C.No.131 of 2005, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli, filed the said claim petition claiming compensation under the Workmen's Compensation Act, for the death of her son Rajkumar.

3.Facts of the case:-

According to the appellant, her son was working as driver under the first respondent. On 09.12.2005 at 3.30 a.m., while he was driving the lorry bearing Registration No.TN-72 H 0914 belonging to the first respondent proceeding from South to North on Kulasai-Tiruchendur Road, the accident occurred during and in the course of his employment. Due to the same, her son died. Her son was 21 years at the time of accident and he was earning Rs.5,000/- per month. The accident occurred only during and in the course of employment under the first respondent. The lorry was insured with



the second respondent. The appellant is dependent of the deceased. Hence, she filed W.C.No.131 of 2005, claiming a sum of Rs.4,00,000/- (Rupees Four Lakhs Only) as compensation against the respondents.

4.The first respondent remained ex-parte before the Commissioner.

5.The second respondent filed counter and denied all the averments made by the appellant. The second respondent contended that the appellant has to prove that the deceased was employed by the first respondent and he was in service on the date of accident i.e., on 09.12.2005 and he died during and in the course of his employment. The appellant has to prove the age and monthly salary of the deceased. There was no insurance policy at the time of accident and therefore, only the first respondent is liable to pay compensation to the legal heirs and they have to get compensation, if eligible, after submitting all the relevant records. In any way, the compensation claimed by the appellant is excessive and not in accordance with law.

6. The second respondent filed additional counter statement and contended that on the date of accident, the registration certificate and permit of the lorry was in the name of T.Maharajan and the Insurance policy was in the name of M/s.Arasan Beedi Company. The policy was not transferred and hence, the second respondent is not liable to pay any compensation and prayed for dismissal of the claim petition.

7. Before the Commissioner, the appellant examined herself as P.W.1 and marked 5 documents as Ex.P1 to Ex.P5. The second respondent examined the Administrative Officer as R.W.1 and marked two documents as Ex.R1 and Ex.R2.

8. Before the Commissioner, the second respondent did not dispute that the deceased died due to the accident during and in the course of the employment. The second respondent disputed his liability on the ground that the lorry involved in the accident was sold to the first respondent by Arasan Beedi Company and Registration Certificate was transferred in the name of the first respondent. The said Arasan Beedi Company as well as the first respondent did not inform the said transfer to the second respondent.

9.The learned Deputy Commissioner of Labour considering the age and nature of work done by the deceased, awarded a sum of Rs.3,27,705/- (Three Lakhs Twenty Seven Thousand Seven Hundred and five only) as compensation to the appellant and directed the first respondent to pay the same.

10. The present appeal is filed against the said portion for exonerating the second respondent from its liability and directed the first respondent to pay the compensation to the appellant.



11. The learned counsel appearing for the appellant contended that once the ownership of the vehicle is transferred and registration certificate issued in the name of the transferee, the Insurance Policy is automatically transferred to the transferee. The policy taken to the vehicle was for the period from 05.05.2005 to 04.05.2006 and accident occurred on 09.05.2005. On the date of accident, policy was in existence and the second respondent is liable to pay compensation in respect of third party claim as well as workmen of transferee. In support of his contention, he relied on the judgment reported in **2003 Supreme Court Cases (Cri) 735 [Rikhi Ram and another vs. Sukhrania (SMT) and others]**.

12. Per contra, the learned counsel appearing for the second respondent contended that as per Section 157(2) of the Motor Vehicles Act, the transferee has to inform the date of transfer in the prescribed form for necessary changes in the insurance policy. Failure on the part of the transferee, the Insurance Policy lapses and Insurance Company is not liable to pay any compensation.

13. I have heard the learned counsel appearing for the appellant and the second respondent and also perused all the materials on record.

14. The only question to be decided in the present appeal is whether failure on the part of the transferee to inform the Insurance Company about the transfer within 14 days will be exonerated the Insurance Company from its liability when policy was in force.

15. At this juncture, it is relevant to extract below Section 157 (1) (2) of the Motor Vehicles Act:-

"157. Transfer of certificate of insurance-(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and



the policy of insurance in regard to the transfer of insurance."

16. It is seen from the above provision, an explanation has been inserted by the Act 54 of 1994 with effect from 14.11.1994 to Section 157(1) of the Motor Vehicles Act, 1988. The said explanation is for clarification of Section 157(1) of the Motor Vehicles Act, 1988. The explanation itself mentions that the same has been inserted for removal of doubts. As per this explanation, deemed transfer as per Section 157(1) was included regarding transfer of right and liability of the certificate of insurance and policy of insurance. These explanations were not considered by the Deputy Commissioner of Labour when he passed the order on 29.12.2006. The judgment of this Court relied on by the second respondent before the Commissioner, is of the year 1992 and judgment of Orissa High Court is of the year 1993, before the explanation to Section 157(1) of the Motor Vehicles Act, was inserted. Whether failure on the part of the transferee to inform the Insurance Company about the transfer within 14 days, as per Section 157(2) of the Motor Vehicles Act will exonerate the Insurance Company, was considered by the Hon'ble Apex Court in the judgment reported in **2006(2) MLJ 422 Supreme Court Cases (United India Insurance Co. Ltd., Shimla, vs. Tilak Raj and others)**. The Hon'ble Apex Court held that failure to intimate the insurer about transfer of motor vehicle, would not affect the third party claim for compensation. The insurance policy is with regard to vehicle and on transfer of vehicle, the transferee is entitled to benefit of insurance policy. On the date of accident, policy issued by the second respondent, was in force. The Commissioner failed to consider the explanation inserted in Section 157(1) of the Motor Vehicles Act and the Judgments referred to above and erred in holding that failure on the part of transferee, the first respondent herein will exonerate second respondent Insurance Company. In view of explanation inserted to Section 157(1) of Motor Vehicles Act and judgment of the Hon'ble Apex Court, the order of the learned Deputy Commissioner exonerating the Insurance Company/second respondent is set aside.

17. The Deputy Commissioner of Labour has considered the materials on record, awarded a sum of Rs.3,27,705/- to be paid to the appellant. Both the respondents 1 & 2 are liable to pay the said sum to the appellant.

18. In the result, the Civil Miscellaneous Appeal is allowed. The second respondent Insurance Company is directed to deposit the compensation amount with interest and costs as directed by the Commissioner for Workmen's Compensation to the credit of W.C.No.131 of 2005, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tirunelveli, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire award amount with interest from the date of petition till date of realisation and proportionate costs, by making necessary



application before the Commissioner. No costs. Consequently, connected miscellaneous petition is also dismissed.

WEB COPY

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Commissioner for Workmen's Compensation
and Deputy Commissioner of Labour,
Tirunelveli.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

AM
TE/RSK/SAR-1 : 24/09/2018 : 5P/4C

C.M.A (MD) No.569 of 2016
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