

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	25.11.2019
Pronounced On	16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1424 to 1427 of 2005
and
C.M.P.No.3523 of 2002
and
C.M.P.Nos.8222 to 8225 of 2005

National Insurance Company Limited,
No.78, T.V.S.Street,
Erode 638 001. ... Appellant in all C.M.As.

Vs

1.R.Kuppusamy ... 1st Respondent in
C.M.A.No.1424/05
2.K.Devaraj ... 1st Respondent in
C.M.A.No.1425/05
3.T.Senthil ... 1st Respondent in
C.M.A.No.1426/05
4.B.Gowri Manohar ... 1st Respondent in
C.M.A.No.1427/05
5.K.Ganesan ... 2nd Respondent in
all C.M.As.

Common Prayer: Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the orders passed by the learned Workmen's Commissioner, Salem in W.C.Nos.315 to 318 of 2002 dated 14.03.2005.

For Appellant : M/s.N.B.Surekha in all C.M.As.

For R1 : Mr.C.Kulanthaivel in
C.M.A.Nos.1424, 1425 & 1427/2005

For R1 : Mr.O.S.Vijaya Sarathi in
C.M.A.No.1426 of 2005

For R2 : No appearance in all C.M.As.

C O M M O N J U D G M E N T

By this common judgment, all the Civil Miscellaneous Appeals are being disposed.

2.The above Civil Miscellaneous Appeals arise out of separate fair and decretal orders dated 14.03.2005 in W.C.Nos.315, 326, 317 & 318 of 2002.

3.By the impugned orders, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem has awarded sum of Rs.1,35,497/-, Rs.68,141/-, Rs.1,02,768/- and Rs.98,976/- as compensation to the respective 1st respondents/claimants.

4.Aggrieved by the same, the present Civil Miscellaneous Appeals have been filed.

5.It was the case of the respective 1st respondents/claimants before Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Sale in all the cases that they were employed by the 2nd respondent herein as load men and while travelling in lorry bearing registration No.TN 27 X 1170 proceeding near Sugametta in Andhra Pradesh, the driver of the lorry drove the lorry in a rash and negligent manner as a result of which the vehicle capasized and fell down in road side pit on the left side of the road. Thus, they sustained injuries.

6.The learned counsel for the appellant Insurance Company submits that the persons were travelling as unauthorised passengers in the lorry. The "Rig and Compressor" mounted on a lorry cannot be treated as a 'Road Transport Vehicle', because the Rig and Compressor mounted on a lorry is used for drilling for bore wells and was not meant for carrying either passengers or for loading or unloading goods. Hence, the Rig and Compressor mounted on a lorry used for drilling bore wells cannot be considered as a 'Road Transport Vehicle' and therefore the Insurance Company cannot be made liable to pay the compensation to the respective 1st respondents/claimants.

7.Further, the learned counsel for the appellant submits that the vehicle was already insured with the Oriental Insurance Company for the period between 18.05.2000 to 17.05.2001. Even though, the owner of the lorry had taken another policy from the appellant for the period between 16.09.2000 and 15.09.2001 and since the accident took place on 17.09.2000, liability cannot be fastened on the appellant Insurance Company based on the said Insurance Policy.

8.It was further submitted that the driver did not hold a valid licence to drive the lorry mounted with Rig.

9.The learned counsel for the appellant referred to the decision of the division bench of this Court in National Insurance Co.Ltd., Salem vs I.Ayyadurai and another, 2003-2-L.W.601, wherein it has held as under:-

10. A drilling rig mounted on a vehicle does not become a road transport vehicle as has been held by this Court in the case of Commissioner of Income Tax v. Popular Bore Well Services (Vol. 194 ITR 12). The Court after referring to the provisions of the Motor Vehicles Act of 1939 observed thus: -

"The rig and compressor mounted on a lorry cannot be treated as a road transport vehicle, because the rig and compressor mounted on a lorry are used only for the purpose of transporting equipment fixed on the lorry for sinking of bore-wells and not for carrying either passengers or loading or unloading of goods. Hence, the rig and compressor mounted on a lorry and used for drilling bore wells cannot be considered as "road transport vehicle".

10.The learned counsel for the respondent submits that the orders of the Deputy Commissioner of Labour, Salem, are well reasoned and require no interference.

11.Heard the learned counsel for the appellant and the respective 1st respondent and perused the records.

12.The Deputy Commissioner of Labour had framed the following 5 issues in the impugned orders:-

- 1) Whether the respective 1st respondents (claimants) suffered employment injuries while working as a load man in the insured vehicle of the 2nd respondent?
- 2) What was the age of the respective 1st respondents (claimants)?
- 3) What was the loss of earning of the respective 1st respondents (claimants)?
- 4) What was the compensation to be paid to the respective 1st respondents (claimants)?
- 5) Who should pay the compensation to respective 1st respondents (claimants)?

13.The main argument of the learned counsel for the appellant is that the vehicle was not intended for carrying passengers and therefore the appellant cannot be made liable for the injury suffered out the alleged accident. It was further submitted that the respective 1st respondents (claimants) have not proved that they suffered employment injuries due to the alleged accident involving the accident vehicle. It is further submitted that the accident vehicle was also insured with the M/s.The Oriental Insurance Company Limited on the date of accident and therefore, the appellant cannot be made liable to pay the compensation without impleading the M/s.The Oriental Insurance Company Ltd., as a respondent in the proceedings

14.The Deputy Commissioner of Labour after considering the Ex.P1 FIR and Ex.P2 Wound Certificate filed by the respective 1st respondents (claimants) has come to a conclusion that not only the vehicle was involved in the accident but also the respective 1st respondents (claimants) suffered employment injuries. This finding of fact arrived by the Deputy Commissioner of Labour cannot be disturbed in this Civil Miscellaneous Appeal and there can be no substantial question of law on this aspect.

15.The other point is whether the vehicle was insured only for Rig Lorry also cannot be countenanced as the Ex.P3 Insurance policy given by the appellant states the premium was collected not only for the legal liability to passengers but also for employees (other). The Details of premium collected for public risk in the Ex.P3 Insurance Policy given by the appellant are as follows:-

SCHEDULE OF PREMIUM			
(B) Rs	LIABILITY TO PUBLIC RISK		
	BASIC PREMIUM		507.00
(+)	Legal Liability to Passenger/NFPP		45.00
(+)	Employees (Car)		60.00
(+)	Employees (other) Unlimited		75.00

16.Thus, the policy was given by the appellant covers the liability arising out of the accident to the passengers and the employees. Therefore, the appellant is liable to pay the compensation to the respective 1st respondents (claimants). The fact that the 2nd respondent owner of the lorry also had

another policy issued by the M/s.The Oriental Insurance Company Ltd., is no consequences.

17.The appellant having covered the risk for the period between 16.09.2000 and 15.09.2001, cannot avoid the liability under the policy though the accident took place on 17.09.2000 i.e with one day after the policy was issued by the appellant. Ex.P1 FIR was also indicates that the accident took place on 17.09.2000. Thus, there is sufficient material to hold the appellant is liable to pay the compensation.

18.That apart, proviso of Section 147 of the Motor Vehicles Act, 1988 clearly specifies that a policy need not cover liability in respect of the death, arising out of and in the course of employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it a goods carriage, being carried in the vehicle, or
- (ii) to recover any contractual liability.

19.However, the policy given by the appellant to the 2nd respondent owner of the lorry clearly covers the liability to not only the passengers but also the employees and premium has been collected as mentioned above. Though the circumstances under which the policy was issued by the appellant raises suspicions as the accident took place on 17.09.2000 i.e one day after the policy was issued on 16.09.2000 when another policy issued by M/s.The Oriental Insurance Company Ltd., was already there for the period between 18.05.2000 and 17.05.2001, nevertheless, the appellant cannot avoid the liability.

20.In the light of the above observations, I am of the view that the impugned orders passed by the Deputy Commissioner of Labour cannot be interfered in the peculiar facts and circumstances of the appellant. Accordingly, liberty is given to the appellant Insurance Company to initiate appropriate proceedings to recover the amount from the 2nd respondent owner of the lorry uninfluenced by the observation of the impugned orders passed by the Deputy Commissioner of Labour and any other observations contained herein in accordance with law.

21. Accordingly, the present Civil Miscellaneous Appeals are dismissed. No cost. Consequently, connected Miscellaneous Petitioners are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

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

2. The Section Officer,
V.R. Section. High Court,
Madras.

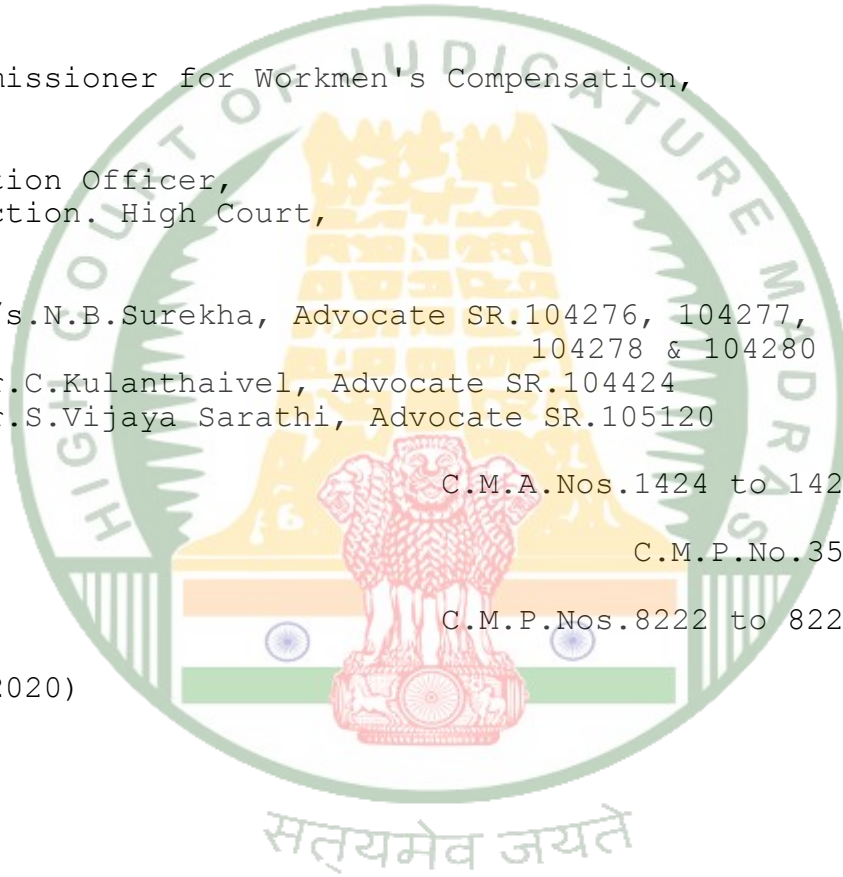
+4cc to M/s. N.B. Surekha, Advocate SR.104276, 104277,
104278 & 104280

+1cc to Mr. C. Kulanthaivel, Advocate SR.104424

+1cc to Mr. S. Vijaya Sarathi, Advocate SR.105120

C.M.A. Nos. 1424 to 1427 of 2005
and
C.M.P. No. 3523 of 2002
and
C.M.P. Nos. 8222 to 8225 of 2005

BS (CO)
CB (17/02/2020)



WEB COPY