IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.09.2019
Pronounced On	22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1429 of 2005

National Insurance Company Limited,
Branch Office 1,
Chetty Street, Thiruchengode. .. Appellant

Vs.

1.P.Ponnuswamy
2.K.Balasubramaniam ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order passed by the Learned Workmen Commissioner, Salem in W.C.No.277 of 2003 dated 07.03.2005.

For appellant : M/s.N.B.Surekha

For R1 : Mr.C.Kulanthaivel
For R2 : Not ready in notice

JUDGMENT

The appellant insurance company is aggrieved by the impugned order dated 07.03.2005 passed by the Commissioner for Workmen's Compensation under the provisions of the Workmen's Compensation Act, 1923 in W.C.No.277 of 2003.

2.By the impugned order, the Commissioner for Workmen's Compensation has awarded an amount of Rs.98,183/- as compensation to the first respondent. Aggrieved by the impugned order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

3.A claim petition was filed by the first respondent against the second respondent herein and the appellant herein before the Commissioner for Workmen's Compensation in W.C.No.277 of 2003 on the ground that the first respondent suffered an employment injury. The first respondent was allegedly employed as a cleaner in the Rig Unit Lorry of the second respondent insured with the appellant herein.

4.The accident is said to have taken place on 18.11.2002 at about 1 p.m when the Rig Unit Lorry was in operation. It is stated that a spanner from the Rig unit slipped and fell on the left leg of the first respondent resulting in fracture and therefore the first respondent was taken for treatment. According to the first respondent, he was permanently disabled due to the injury and therefore was entitled to receive compensation under the provisions of the Workmen's Compensation Act, 1923.

5.The appellant herein has contested the above claim stating that the first respondent was not employed with the second respondent and therefore, the first respondent was not entitled to the compensation claimed.

6.Apart from the above, it was also stated that the age of the first respondent was lowered to 35 from 52 years to claim higher compensation.

7.The Commissioner for workmen's Compensation has framed following 5 questions and answered respectively as follows:-

i. Whether the 1st respondent was injured in an accident while working as a cleaner of the vehicle of the 2nd respondent?

Ans: Accident occurred while the 1st respondent working as a cleaner of the vehicle of the 2nd respondent.

ii. What are the age and the remuneration of the 1st respondent at the time of the accident?

Ans: The 1st respondent's age was 35 years at the time of accident and he was earning a sum of Rs.2768/- per month.

iii. Extent of permanent disability of the 1st respondent?

Ans: The 1st respondent had suffered 30% of disability.

iv. What is the amount of compensation available to the 1st respondent?

Ans: Calculation of the compensation was fixed as follows:-

Age of the 1st respondent: 35 years

Factor : 197.06

Monthly Income : Rs.2768/-

Loss of earning capacity : 30%

Compensation Amoun : 60/100 x 2768 x 197.06 x 30/100

: Rs.98,183/-.

v. Who has to pay the compensation to the 1st respondent?

Ans: The appellant is liable to pay the compensation to the 1st respondent within the period of 30 days from date of receipt of the order. If the appellant fails to pay, it shall be liable to pay interest at the rate of 9% from the date of accident.

8.In the present appeal the appellant (in C.M.A.No.1429 of 2005) has raised the following substantial questions of law:-

a) Whether the Learned Workmen Commissioner is right in not following the decision reported in 2004 (2) TNMAC Page 47 (DB) wherein it had been categorically held that under the policy endorsement 37 the insurance coverage is executed when the rig unity lorry is stationed and used as a platform for operating the rig unit?

b) Whether the Learned Workmen Commissioner is right in holding that there exists a relationship of employee and employer when there is no specific documentary proof for the same and when the Learned Workmen Commissioner had rightly rejected the claim of monthly salary as given in the counter of the 1st opposite party holding that there is no proof?

c) Whether the Learned Workmen Commissioner is right in awarding the compensation to the claimant when he was performing the work, which is not assigned to him.

9.I have considered the arguments advanced by the learned counsel for the appellant and the 1st respondent and have also perused the Insurance Policy and the cover note which reads as under:

a) Under Section I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto except for loss or damage arising directly from fir, explosion, self ignition or lightning or burglary house breaking or theft.

b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

10.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 this Court has allowed the amount deposited by the Insurer to be withdrawn and held that it was open for the Insurer to recover the same from the insured. The Court had dealt with the exclusionary clauses in the policy. However, while disposing the appeal this Court has held as under:

> 12. After disposal of the matter by the Tribunal, the insurer deposited the amount awarded as compensation. We do not consider it just to prevent the claimant from withdrawing that sum or to compel him to deposit the money in the event of his having drawn the same by now. The second respondent, though served with notice in the proceedings before the Tribunal as also in the appeal filed against that award, has remained ex parte. The matter arises out of an accident which had occurred in the year 1992 about ten years ago. It will, however, be open to the insurer to

recover this amount from the insured. The appeal is disposed of accordingly.

11.The learned counsel for the 1st respondent relied on the following two decisions:-

i. National Insurance Company Limited vs Arumugham and Ors, 2006 (2) CTC 368.

ii. National Insurance Company Ltd. Vs Senniappan and Ors, 2009 ACJ 198.

12.The two decisions referred by the learned counsel for the 1st respondent had declined to interfere with the order passed by the lower authority awarding compensation. In National Insurance Company Limited vs Arumugham and Ors, 2006 (2) CTC 368, this Court dealt with clause 17 of the Insurance Policy which reads as under:-

> "IMT-17 Legal liability to persons employed in connection with the operation and/or maintaining and/or unloading of goods carrying commercial vehicles:
>
> In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the Insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver or cleaner of persons employed in loading/or unloading but it any case not exceeding seven in number including driver and cleaner whilst engaged in the service of the insured in such occupation in connection with the goods carrying commercial Vehicles and will in addition be responsible for all costs and expenses incurred with its written consent.
>
> The premium have been calculated at the rate of Rs. 15 per driver and or cleaner and or person employed in loading and/or unloading but not exceeding seven in number including driver and cleaner. Provided always that:

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurance company a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the Company to inspect such record.

(4) In the event of the Policy cancelled at the request of the Insured no refund of the Premium paid in respect of this Endorsement will be allowed. Subject otherwise to the terms exceptions conditions and limitations of this Policy".

13.The Court also held that endorsement 17 cannot be read in isolation. If it is read in isolation, certainly the submissions made on behalf of the appellant looked quite attractive. In the case on hand, since the Certificate of Insurance related to the vehicle, namely Ashok Leyland rig unit, it was observed that at the time of taking the Policy and issuance of Certificate, it must have been in the contemplation of both the insurer as well as the insured that the coverage would encompass not only the avocation of driver and cleaner, in the ordinary context of operation and driving of the 'Motor vehicle' carrying the rig unit separately, but would take within its fold even the operation and maintenance of the rig unit on the whole along with the Motor Vehicle on which it was mounted.

14.This Court further held that any other construction of Endorsement 17 vis-a-vis the payment of premium relating to a driver and a cleaner would not further the purpose and the intent of the Certificate of Insurance and the coverage made by the appellant at the instance of the third respondent. In the said circumstances, the expressions used in Endorsement 17 providing for the persons employed in connection with the operation and/or maintenance of the goods carrying commercial vehicles will have to be given an expanded meaning to include the lorry with the rig unit embedded on it. Ultimately, this

Court held as follows:

> 21. Therefore applying the above well settled principles on interpretation of statutes and covenants, I am convinced that Clause 17 can only be interpreted to include the avocation of deceased Anandavel as Driller/Cleaner of the Lorry with the Rig Unit and the Commissioner for Workmen's Compensation was fully justified in awarding the compensation under the impugned award. Therefore, I am not in a position to interfere with the order impugned in this appeal and the appeal has to necessarily fail.

15.In National Insurance Company Ltd. Vs Senniappan and Ors, 2009 ACJ 198, also referred to two cases. It noted that the Insurance Policy was a comprehensive policy and separate premium had been paid for covering the risk to employees and there is no exclusion clause by incorporating Endorsement No.37 Therefore, upheld the compensation awarded.

16.I have perused the order passed by the Commissioner of Workmen's Compensation, Salem. Before, the Commissioner of Workmen's Compensation the appellant had contended that the 1st respondent was not a cleaner but was employed in the capacity of the cook and that the vehicle was not in motion at the time of alleged accident and therefore the liability cannot be fastened on the appellant. However, the Commissioner of Workmen's Compensation has concluded that the 1st respondent was employed as a cleaner and therefore the 1st respondent entitled to the compensation.

17.This Court only can deal with substantial questions of law and therefore findings of facts arrived by the Commissioner for Workmen's Compensation is binding on either of the parties.

18.The findings of the facts that the 1st respondent was a cleaner and that he suffered employment injury in the course of the employment cannot be re-agitated now in this appeal. Consequently, the impugned order holding that the 1st respondent was entitled to compensation cannot be disturbed in this appeal.

19.It is the case of the 1st respondent, the cover note to the policy has been inserted subsequently and did not form part of the Policy and therefore, the same cannot be relied upon. Whichever, one looks at, the facts remain that the 1st respondent was an employee of the 2nd respondent owner of the Rig Unit Lorry. Therefore, the compensation cannot be denied in the light of the decision cited by the learned counsel for the appellant itself, wherein the Court held that the Insurance Company can pay and recover the amount from the insured. Therefore, the liberty is given to the appellant to recover the amount from the 2nd respondent in accordance with law.

20.Accordingly, the appeal stands dismissed with the above observations. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Workmen's Compensation,
Salem.

Copy to : The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s.N.B.Surekha, Advocate Sr.No.88328

AKM/28.11.19 /8P-4C/

Judgment in C.M.A.No.1429 of 2005