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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.372 of 2007
and MP.No.1 of 2007

The New India Assurance Company Limited,
Motor Third Party Cell,
45, Moore Street,
Chennai - 600 001.

... Appellant

vs

1.A.Varadhan
2.Sadiq Basha

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order of the Commissioner for Workmen Compensation on the file of Deputy Commissioner of Labour - I, Chennai dated 12.10.2006 and made in W.C.No.110 of 2004.

For Appellant : Mr.S.Ramalingam

J U D G M E N T

The Appellant-Insurance Company is aggrieved by the final award dated 12.10.2006 passed by the Deputy Commissioner of Labour-I, Chennai in W.C.No.110 of 2004.

2. By the impugned order, the Deputy Commissioner of Labour - I, Chennai has awarded a sum of Rs.4,83,840/- to the 1st respondent who was the claimant.

3. Aggrieved by the same, the present civil miscellaneous appeal has been filed. In the present appeal, the appellant has raised the following substantial questions of law for consideration:-

" 1.Whether the Deputy Commissioner of Labour erred in fixing the liability on the appellant insurance company?



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2. Whether the Deputy Commissioner of Labour erred in holding that the policy of insurance was in force at the time of accident?

3. Whether the Deputy Commissioner of Labour in holding that the policy of insurance was in force even after cancellation of the insurance policy?

4. Whether the Deputy Commissioner of Labour erred in fixing the monthly salary of the first respondent/applicant?

5. Whether the Deputy Commissioner of Labour erred in following the provisions of Minimum Wages Act while determining the monthly salary?

6. Whether the Deputy Commissioner of Labour erred in coming to the conclusion that the first respondent/applicant has sustained loss of earning capacity contrary to the provisions of Sec.4(i) C (ii) of the Act?

7. Whether the Deputy Commissioner of Labour erred in not obtaining the assistance by invoking the provisions of Sec. 20(3) of the Act for determining the loss of earning capacity?

8. Whether the Deputy Commissioner of Labour was correct in coming to the conclusion that the first respondent/applicant had suffered loss of earning capacity by solely replying upon the evidence of PW-2 and Ex.P-5."

4. It is stated that in Oriental Insurance Company Limited vs. Sindarjit Kavur - (1998 -ACJ -123), the Insurance Company denied the liability asserting that under Section 64-VB of the Insurance Company Act no risk was assured unless the premium had been received in advance. The Tribunal, rejected the contention and mulated the liability of the Insurance company. The appeal preferred by the Insurance company had been dismissed by the Hon'ble High Court. On further appeal, a Full Bench of the Hon'ble Supreme Court held that the Insurance company is liable to indemnify third party liability as provision of Section 147(b) and 149(1) of the Motor Vehicles Act.

5. Heard the learned counsel for the appellant. There was no representation on behalf of the respondents. It is the case of the appellant that a notice for cancellation of the policy was given to the 2nd respondent on 24.06.2003, whereas the alleged accident of Labour erred in fastening liability or



the appellant. However, the grounds taken in the present appeal was not the defence of the appellant before the Deputy Commissioner Labour.

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6. I am therefore of the view that the order passed by the Deputy Commissioner of Labour- 1, Chennai, is well reasoned and requires no interference. Therefore, I do not find any merits in the present appeal.

7. Accordingly, the questions of law raised by the appellant are answered against the appellant. The present Civil Miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

drl

To

1.The Deputy Commissioner of Labour -I,
Chennai.

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

+lcc to M/s.S.Ramalingam, Advocate SR.92229

C.M.A.No.372 of 2007
and MP.No.1 of 2007

NRL (CO)
CB(21/01/2020)