IN HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2019

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.870 of 2006

1.Subbammal
2.V.Vidya (Minor
3.V.Venkatesan(Minor)
(Minor - appellants 2 and 3
rep.by their mother and natural
guardian Subbammal I Appellant)
4. .Margatham Ammal
5.Kannan .. Appellants

vs

1.M.Kumar

2.The Oriental Insurance Company,
Limited
(Motor 3rd Party Claim Partie,
No.8, Esplanade, L.I.C. Buildings,
Chennai.

Branch Office:
11/3 C.V.Naidu Road,
Tiruvellore .. Respondents 1&2
Opposite Party 1 &2

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Deputy Commissioner of Labour -2, Chennai dated 28.02.2002 made in WC.No.95 of 2000.

For appellant : No Appearance
For R2 : Mr.R.Sivakumar
For R1 : Not Ready in Notice

J U D G M E N T

The appellants are the claimants before the Deputy Commissioner of Labour-2, Chennai in W.C.No.95 of 2000.

2. They are the wife, children and parents of the deceased K.Parthiban who while driving Tractor & Trailor bearing reg.No. TN 21 C 8212 of the first respondent M.Kumar met with an accident and died on 14.09.1999 after undergoing treatment for the injury.

3. There is no representation for the appellants and the 1st respondent. Only the learned Counsel for the second respondent Mr.R.Sivakumar is present today. He has assisted the Court.

4. In the claim petition before the Deputy Commissioner of Labour - II, the claimants who are the appellants herein claimed a sum of Rs.3,00,000/- as compensation under the provisions of the Workmen's Compensation Act, 1923.

5. Before the Tribunal, the 2nd respondent Insurance Company disputed their liability to pay the compensation to the appellants on the ground that the deceased did not die due to the accident and did not possess a valid licence and therefore there is a breach of terms of the policy.

6. Alternatively, it was submitted that in the vehicle was used for commercial purpose for carrying leaves for roofing and therefore for not agricultural purpose and therefore, there is no question of awarding the compensation to the claimants for violation of terms and conditions of the policy.

7. In the impugned order, the Deputy Commissioner of Labour-2, Chennai had framed three issues and has awarded a sum of Rs.2,11,790/- to the claimants against the payable claim amount of Rs.3,00,000/-.

8. The said amount has been ordered to be paid by the 1st respondent owner of the Tractor-Trailer which was involved in the accident.

9. Aggrieved by the same, appellants are in appeal. They pray that the second respondent should be made liable to pay compensation to them, as the vehicle was insured with the second respondent.

10. In the appeal, the appellants/claimants have raised the following substantial questions of law?

> " 1.The Tribunal is right in granting compensation as against the first opposite party when the Tractor is used for agriculture purpose?
>
> 2. Whether the Tribunal is right in granting compensation as against the first opposite party when the Driver of the Tractor was not charged for the offence under Section 3 of the Motor Vehicles Act?
>
> 3. Whether the Tribunal is right in caning to the conclusion that the Driver did not possess a valid licence to drive the Tractor without examining the transport authorities or investigating authority?"

11. On 07.03.2006, while admitting this appeal, this Court has framed the following questions of law to be answered in the present appeal:-

> " Whether the Tribunal is right in granting compensation as against the first opposite party when the Driver of the Tractor was not charged for the offence under Section 3 of the Motor Vehicles Act?"

12. It is the case of the appellants that the accident took place in the course of employment and since a valid policy existed at the time of accident, the 2nd respondent ought to have been made liable to pay the compensation.

13. The learned Counsel for the second respondent submitted that the accident vehicle was used for commercial purpose for carrying leaves as was found by the 2nd respondent's investigator in Ex.R1 Investigation Report of the on 15.03.2001 and therefore the Dy. Commissioner has rightly held that the 2nd respondent was not liable to pay compensation. It was further submitted that the deceased did not have a valid licence at the time of the accident and therefore the 2nd respondent cannot be held liable.

14. The learned counsel for 2nd respondent therefore submits that the order of the Deputy Commissioner of Labour is well reasoned and requires no interference.

15. I have considered the arguments advanced by the learned counsel for the 2nd respondents.

16. The conclusion in the impugned order is based on the investigation report dated 15.03.2001 in respect of an accident which took place on 14.09.1999.

17. As per Ex.R1 marked through R.W.1 neither the 1st respondent nor the Appellant-claimants produced a copy of the licence of the deceased at the time of investigation. Therefore, it has been concluded that the deceased did not have a valid licence.

18. The arguments that the vehicle was used for purpose other than the purpose for which the deceased was insured cannot be countenanced in the light of the specific clauses in the insurance policy covering liability raising out of the use of the insured vehicle.

19. In Fahim Ahmed vs. United India Insurance Compny Ltd., AIR 2014 SC 2187, the Hon'ble Supreme Court held as follows:

> " Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor was any evidence led to prove the same. In our opinion, it was mandatory for Respondent 1 Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein."

20. In the present case there is no evidence to show that the vehicle was used for commercial purpose. At the same time there is no dispute that the deceased died in the course of employment while driving the insured vehicle.

21. The proviso Section 147 of the Act stipulates the requirements of policies and limits of liability. Proviso to Section 147(1) reads as follows:

> Provided that a policy shall not be required –
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injured 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 a conductor of the vehicle or in examining tickets on the vehicle or

c) if it is a goods carriage, being carried in the vehicle, or

d) to cover any contractual liability."
"

22. Thus, the driver (which includes his representatives) of the vehicle-employed by the 1st respondent is entitled to claim compensation in case of injury or death is on account of the use of the vehicle and in the course of employment.

23. The fact whether the deceased was holding the valid licence at the time of accident or not cannot be decided on assumption based on the statement and conclusion arrived by the Investigator.

24. In absence of any evidence barring the report of the investigator vide Ex.R1, the finding that the deceased did not hold a valid licence cannot be sustained.

25. Further, even if the driver of the vehicle did not hold valid policy, since the accident took place in the course of employment and in the use of the insured vehicle, the 2nd respondent insurance company cannot be absolved of its liability.

26. Both Workmen' Compensation Act, 1923 and Motor Vehicles Act, 1988 are welfare legislation. They are intended to protect the interest of the injured and the legal heirs of the deceased.

27. In view of the same, I am of the view that the substantial questions of law raised in the present appal by the appellant and deserves to be answered in favour of the appellant.

28. The second respondent-Insurance Company is therefore directed to pay the compensation to the appellant and recover the same from the 1st respondent in accordance with law if advised.

29.The Civil Miscellaneous Appeal stands allowed with the above observation. No Cost.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jen/kkd

To
1. The Deputy Commissioner of Labour -2,
   Chennai.

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

C.M.A.No.870 of 2006

A.SK(20/01/2020)