

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2019

RESERVED ON : 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.144 of 2010
and M.P.No.1 of 2010

Oriental Insurance Co. Ltd.,
R.V.R.Buildings,
Dhali Road, Udumalpet.

... Appellant

vs

1.Praveen Kumar

2.M/s.Suguna Poultry Farm,
No.25, Nehru Street,
Udumalpet.

.. Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 30 of Workmen's Compensation Act, 1923, against the order dated 12.10.2009 made in W.C.No.24 of 2008 on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Coimbatore.

For Appellant : Mr.N.Vijayaraghavan for
M/s.M.B.Gopalan Associates

For Respondents : No appearance

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 12.10.2009 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore in W.C.No.24 of 2008.

2. By the impugned order, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore has awarded a sum of Rs.70,889/- as compensation to the claimant / 1st respondent.

3. It was the case of the 1st respondent / claimant before the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Coimbatore that he was employed by the 2nd respondent herein as a workshop incharge and while driving motorcycle bearing registration No.TN.41 Y 9425 proceeding near Housing unit Bus stop in Udumalai- Pollachi, he met with an accident, as a result of which he sustained injuries.

4. The learned counsel for the appellant/Insurance Company submits that though the vehicle was insured with the appellant, the policy does not cover liability of the employee/rider of the second respondent and that the first respondent was not a worker.

5. Aggrieved by the same, the appellant-Insurance Company has filed the present Civil Miscellaneous Appeal.

6. In the present Civil Miscellaneous Appeal, the appellant has raised the following substantial questions of law:-

- i. Whether the order of the lower Court is sustainable in law in holding the appellant liable contrary to the terms of the Policy excluding liability for employees travelling in the vehicle?
- ii. Whether the finding of the lower Court holding the appellant liable without considering the terms of the policy is sustainable?

7. Heard the learned counsel for the appellant.

8. I have perused the order of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Coimbatore.

9. As per the first proviso to Section 147 of the Motor Vehicles Act, 1988, an insurance policy shall not be required 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 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, 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
- ii) to cover any contractual liability."

The fact that the first respondent was an employee of the second respondent is not in dispute. Eventhough, the package policy covers only the liability of the third party and the owner of the vehicle and not an employee, nevertheless, the liability under Section 147 of the Motor Vehicles Act, makes it clear that as the owner of the vehicle i.e. the second respondent would be liable to pay compensation to his employee in respect of the liability arising under the proviso of the Workmen's Compensation Act, 1923.

10. As the vehicle was insured with the appellant insurance company, the appellant cannot avoid its contractual liability arising out of the contract of insurance. The amount involved in the appeal is also meagre and does not call for interference.

11. In case the appellant has a valid defence to avoid its liability under the insurance policy on the ground that the said policy was covered only the risk of the owner of the vehicle namely the employer and not the employee, it is for the appellant to pay and recover the amount from the owner of the vehicle.

12. In the light of the above, the Civil Miscellaneous Appeal stands dismissed with liberty to the appellant Insurance Company to initiate appropriate proceedings to recover the amount from the 2nd respondent owner of the vehicle uninfluenced by the observation of the impugned order passed by the Deputy Commissioner of Labour and any other observations contained herein in accordance with law. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(DR CJ conf)

//True Copy//

Sub Assistant Registrar

kkd

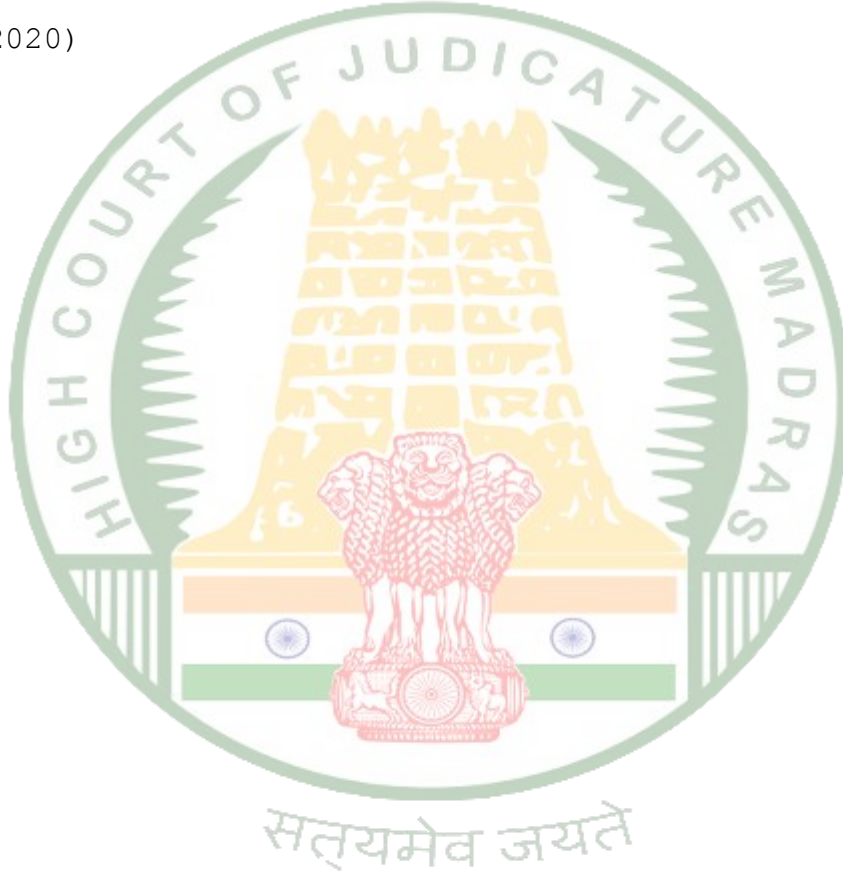
To

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.104192

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RK (CO)
CB (30/01/2020)



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