IN HIGH COURT OF JUDICATURE AT MADRAS

| | |
|---|---|
| Reserved On | 26.11.2019 |
| Pronounced On | 16.12.2019 |

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2372 of 2009

Raja.M ... Appellant/Applicant

vs

1.Annapoorani

2.National Insurance Company Limited,
Division - 1, L.R.N.Complex,
Saradha College Road,
Salem - 7. ... Respondents/Opposite parties

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Deputy Commissioner of Labour, Salem, Commissioner for Workmen's Compensation Salem, dated 31.03.2008 made in W.C.No.177 of 2006.

For appellant : Mr.K.Kuppusamy

For R1 : No appearance

For R2 : Mr.N.B.Surekha

J U D G M E N T

Heard the learned counsels for the appellant and the 2nd respondent.

2. In the present appeal, the appellant has questioned the order passed by the Deputy Commissioner of Labour, Salem on the ground that only the first respondent /owner of the vehicle is liable to pay the compensation.

3. By the impugned order, the second respondent-Insurance Company has been dischared of its liability on the following two grounds:

> " i) that the appellant did not possess valid driving licence on the date of accident on 18.01.2015.
>
> ii) that the first respondent allowed more than seven passengers in the vehicle and therefore, the second respondent was discharged of its liability under the policy."

4. By the impugned order, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore has awarded a sum of Rs.2,51,874/- as compensation to the claimant / appellant.

5. The Deputy Commissioner of Labour relied on the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Khusum Rai and Others, 2006 (2) CTC 347 while passing the impugned order.

6. In the above case, the views of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 was followed. The Hon'ble Supreme Court held that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all and that it was the obligation of the owner to take adequate care to see that a driver had an appropriate licence to drive the vehicle.

7. In paragraph 110, the Hon'ble Supreme Court in Swaran Singh cited supra. held as follows:-

> "(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.



8. The full bench of the Hon'ble Supreme Court in Singh Ram vs Nirmala and Others, (2018) 3 SCC 800 followed the above decision in Swaran Singh (cited supra) and had upheld the order of the High Court to pay the amount and recover the same since the driver of the vehicle did not have a valid licence. In paragraph Nos.7 & 8, the Court observed as under:-

> 7. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a

> licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care [Proposition (vii) of Swaran Singh [National Insurance Co. Ltd. v.Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] ] since he could not have been unmindful of facts which were within his knowledge.
>
> 8. In the circumstances, the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs.

9. The respondent Insurance Company has not discharged burden as it was contemplated in the above judgment.

10. In the light of the above judgments, I find sufficient reason to allow the present Civil Miscellaneous Appeal filed by the appellant/claimant. The amount of compensation payable to the appellant has already been quantified by the Deputy Commissioner of Labour, Salem. Therefore, the 2nd respondent is directed to deposit the aforesaid compensation awarded by the Deputy Commissioner of Labour together with interest of 12% from the date of accident till the date of deposit, within a period six weeks from the date of receipt of a copy of this order before the Deputy Commissioner of Labour, Salem.

11. Accordingly, liberty is given to the 2nd respondent Insurance Company to initiate appropriate proceedings to recover the amount from the 1st respondent uninfluenced by the observation in the impugned orders passed by the Deputy Commissioner of Labour and any other observations contained herein in accordance with law.

12. Accordingly, the Civil Miscellaneous Appeal is allowed. No cost.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jen

To

1.The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Salem.

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

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 104279
+1cc to Mr.K.Kuppusamy, Advocate, S.R.No. 104375

C.M.A.No.2372 of 2009

LN(CO)
GN(14/02/2020)