

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.439 of 2009

and

M.P.No.1 of 2009

National Insurance Company Limited
Branch office 1631/1-B, 1st floor,
Salem -Bhavani Main Road,
Sankari, Salem District.

... Appellant/R2

Vs

1. Kannan ... R1/Petitioner
2. Muthusamy ... 2nd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workman Compensation Act, against the award passed in W.C.No.477 of 2005 dated 04.12.2006 by the Commissioner of Workmen's Compensation, Salem.

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

For R1 : Not Ready Notice

For R2 : Mr.N.Manokaran

J U D G M E N T

The Appellant/Insurance Company is aggrieved by the impugned order dated 04.12.2006 passed by the Deputy Commissioner of Labour, Salem in W.C.No.477 of 2005.

2. By the impugned order, the Deputy Commissioner Workmen's Compensation has awarded a sum of Rs.1,16,962/- as compensation together with 7.5 % interest to the 1st respondent/claimant.

3. It was the case of the 1st respondent/claimant that he was employed by the 2nd respondent for drilling operation on 28.07.2004 and at about 08.30 p.m., at Paliwal Kapes Oil Mill in Khandwa, Madhyapradesh, while drilling operation was going on, he was injured and thereafter taken for treatment for fracture on right thigh and was thereafter discharged from the hospital.

before the Deputy Commissioner of Labour. Since the 1st respondent/claimant was employed by the 2nd respondent as a drilling operator and since the Rig unit lorry of the 2nd respondent being insured with the Appellant/Insurance Company, the appellant was liable to pay compensation.

5. However, the Appellant/Insurance Company failed to appear before the Deputy Commissioner of Labour and therefore, ex-parte order came to be passed in favour of the 1st respondent. In the present appeal, the appellant/insurance Company has raised the following substantial questions of law:-

"A. Whether the learned workmen commissioner is right in fixing the liability upon the insurance Company when under the policy conditions IMT 37, they had contracted not to indemnify the insured while the workmen get involved in an accident in the course of operating the tool fitted on the lorry?

B. Whether the learned workmen commissioner right in fixing the liability upon the insurance company when no premium is paid to cover the workmen of the insured"

6. It is the contention of the learned counsel appearing for the appellant that the Deputy Commissioner of Labour failed to see that there is an Exclusion Clause IMT 37 and therefore any accident due to the operation of the tool when the vehicle was stationary cannot fasten the appellant with liability under the Act.

7. Further contention of the learned counsel for the appellant is that the 1st respondent/claimant was not injured by any road accident but he was injured when rods being lifted fell on him and injured by the 1st respondent/claimant and therefore, the appeal cannot made liable for the accident.

8. The admitted facts of the case are that the 1st respondent/claimant was employed by the 2nd respondent for carrying drilling operation for Paliwal Kapes Oil Mill in Khandwa, Madhyapradesh and that on 28.07.2004, the 1st respondent/claimant was injured when the insured rig lorry was in operation. The 1st respondent was taken to the Nursing Home for treatment and that he was discharged from the hospital on 07.08.2004.

9. The new grounds of appeal raised in this Civil Miscellaneous Appeal were not part of the counter before the Deputy Commissioner of Labour. The appellant also chosen to remain absent during hearing before the Deputy Commissioner of Labour. Therefore, the appellant cannot raise it in the present Civil Miscellaneous Appeal for the first time. I do not find any reasons to interfere with the order of the Deputy Commissioner of Labour as it is well reasoned. There is no

merits in the present Civil Miscellaneous Appeal.

10. Accordingly, questions of law raised by the appellant are liable to be answered against the appellant. At the same time, there is no harm in giving liberty to the appellant to recover the amount from the second respondent owner of the lorry in accordance with law.

11. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msrm

To

1.The Commissioner, of Workmen's Compensation,
Salem.

2. The Record Clerk,
VR Section,
High Court, Madras.

+lcc to Mr.N.B.Surekha, Advocate, S.R.No. 97533

+lcc to Mr.N.Manokaran, Advocate, S.R.No. 97817

C.M.A.No.439 of 2009

EV(CO)
GN(28/01/2020)