

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.11.2019
Pronounced On	10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2252 of 2013

and

M.P.No.1 of 2013

The New India Assurance Co.Ltd.,
Parimalam Complex,
Erode - 11.

... Appellant

vs

1.Madhammal

2.P.Perumal

3.K.Subramani

4.P.Anai Gounder

5.Chief Executive,
Ponni Sugars (Erode) Ltd.,
Cauvery R.S., Erode - 7.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 11.02.2013 made in W.C.No.439 of 2006 by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem and to dismiss the said claim application.

For appellant : Mr.C.Ramesh Babu
For R1 & R2 : Mr.S.Viswanathan
For R4 & R5 : No appearance

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 11.02.2013 passed by the Deputy Commissioner of

Labour in W.C.No.439 of 2006.

2.By the impugned order, the Deputy Commissioner of Labour has awarded a sum of Rs.2,68,800/- as compensation along with Rs.2,500/- for funeral expenses payable by the appellant Insurance Compensation since the principal employer i.e 4th respondent was insured with the appellant.

3.Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed. In the present Civil Miscellaneous Appeal, the appellant has raised the following substantial questions of law:-

- i. Whether the Deputy Commissioner of Labour is correct in fixing the liability on the Insurance Company to pay the compensation though the policy "Rasta Apatti Kavach - Group personal accident Policy" does not cover the claim under the provisions of Workmen's Compensation Act?
 - ii. Is it not an admitted fact that the policy issued to the 5th respondent herein (2nd Opposite party in W.C.Case) under "Rasta Apatti Kavach - Group Personal Accident Policy" covering the deceased up to Rs.50,000/- as a maximum liability.
- 4.Heard the learned counsel for the appellant and 1st and 2nd respondents.

5.The facts of the case is that the deceased employee Murugan was employed by the 4th and 5th respondents for cutting sugarcane from the sugarcane field of the 3rd respondent. The deceased Murugan had worked on 20.03.2006 along with other workers and on the following day, he was found dead in the morning with froth in his mouth. It was suspected by the employees and the respondents that the deceased would have died due to snake bite. However, the postmortem report revealed that the death was due to the cardiac arrest/ heart failure. The deceased was only aged 20 years at the time of death.

6.The 4th respondent contractor had taken out an Insurance Policy (Rasta Apatti Kavach - Group Policy) from the appellant Insurance Company for their employees which was subject to the maximum amount of Rs.50,000/- for each person under the policy. In the said policy, total sum insured was Rs.9,10,000/- under

the various categories. However, only Rs.50,000/- was covered for each person for death (personal accident).

7.It is the contention of the appellant Insurance company that the appellant can be liable to pay only Rs.50,000/-.

8.The learned counsel for the appellant submits that issue is squarely covered by the decision of Division Bench of this Court in National Insurance Co.Ltd. Vs V.Prabhu Das and another, 2005 ACJ 409. It was therefore submitted that the impugned order was liable to be modified by restricting the compensation payable to the 1st and 2nd respondents (legal representatives of the deceased Murugan) in terms of the Insurance Policy. He therefore submits that the 1st and 2nd respondents/claimants may be permitted to withdraw the aforesaid sum of Rs.50,000/- and the interest accrued thereon from the deposit made.

9.The learned counsel for the appellant further submits that the Deputy Commissioner of Labour ought to have fastened the liability on the 3rd and 4th respondents under the provisions of the Workmen's Compensation, Act, 1923.

10.Per contra, the learned counsel for the 1st and 2nd respondent defends the order passed by the Deputy Commissioner of Labour that the order is well reasoned and requires no interference. Alternatively, he submits that the 1st and 2nd respondents who are the dependents and aged parents of the deceased Murugan have no means to recover at this point of time. Therefore, the amount that was awarded as compensation to be paid by the appellant, may be paid to them and the appellant may recover the amount from the 4th and 5th respondents.

11.The Insurance Policy is clear. It being the contract of indemnity, the appellant cannot be fastened with the liability than what has been expressly agreed between the appellant and the insured person namely the 4th respondent. Therefore, the order passed by the Deputy Commissioner of Labour has to be modified. Further, in National Insurance Co.Ltd. Vs V.Prabhu Das and another, 2005 ACJ 409, it was held as follows:-

From the evidence available on record, we are able to see that the said policy does not cover any claim under the provisions of Workmen's Compensation Act. According to the said policy, the amount has already been paid to the owner of the vehicle. The learned Deputy Commissioner, without even appreciating the scope of the said

policy, has found that the insurance company is liable to pay the amount fixed by the insurance company in view of Exh.R1. The learned Deputy Commissioner of Labour has not even admitted the defence taken by them in the counter and also the evidence adduced on its side. Hence, the liability fixed on the insurance company by the Deputy Commissioner of Labour alone is set aside and the claimant can recover the amount from the respondent No.2.

12. Therefore, the impugned order is modified in terms of the above decision of the division bench of this Court by permitting the 1st and 2nd respondents (legal representatives of the deceased Murugan) to withdraw the amount of Rs.50,000/- together with interest accrued thereon. The balance amount of compensation is to be paid by the 4th and 5th respondents.

13. After adjusting the aforesaid amount deposited by the appellant, the balance amount can be paid back to the appellant Insurance Company.

14. The 4th and 5th respondents are directed to pay the balance compensation amount awarded by the Deputy Commissioner of Labour together with interest at 12% from the date of the accident till the date of payment within a period of three months from the date of receipt of a copy of this order, failing which, the 1st and 2nd respondents are entitled to initiate appropriate proceedings to attach the properties of the 4th and 5th respondents and recover the dues.

15. The impugned order is thus partly modified and the present Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

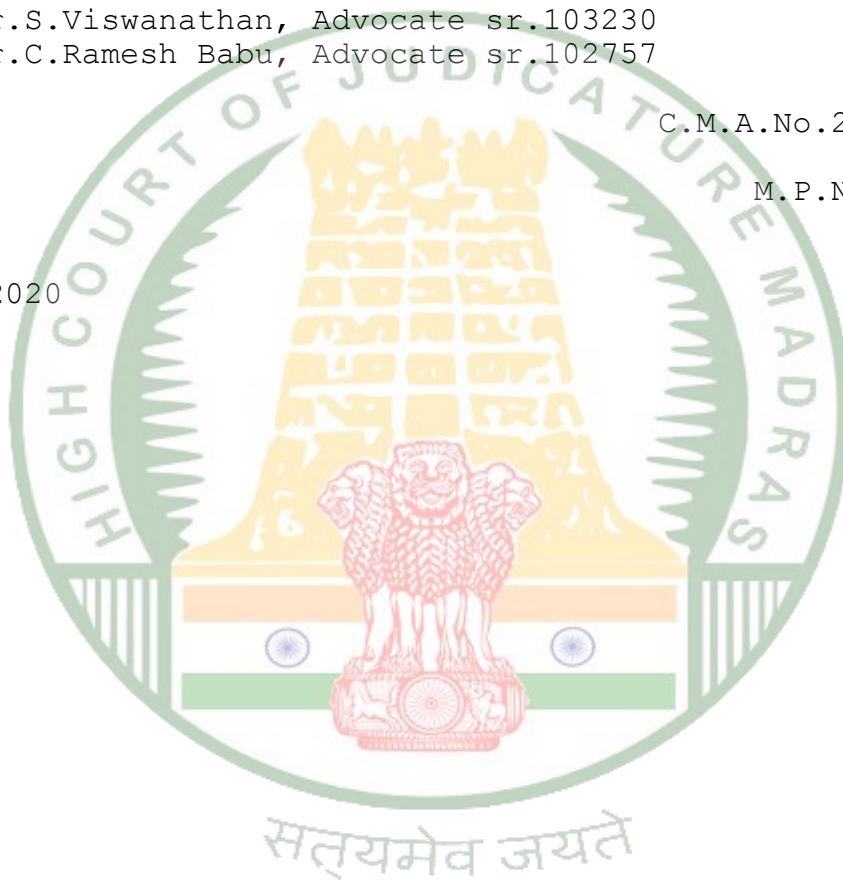
2.The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.S.Viswanathan, Advocate sr.103230

+1cc to Mr.C.Ramesh Babu, Advocate sr.102757

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nr 04/02/2020



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