IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2693 of 2012
and
M.P.No.1 of 2012

Messers. The Oriental Insurance Co., Ltd.,
PLA Building, 12A, Kovai Road,
Karur. ... Appellant/R2

vs

1.T.Nataraja .. R1/Petitioner
2.M.Rajendran .. R2/R1

PRAYER:
Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the order dated 21.03.2012 made in W.C.No.570 of 2005 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) at Salem.

For Appellant : M/s.M.Krishnamoorthy

For R1 : No Appearance

For R2 : Not Ready Notice

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 21.03.2012 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem in W.C.No.570 of 2005.

2. By the impugned order, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem has awarded a sum of Rs.76,786/- as compensation to the claimant / 1st respondent.

3. It is the case of the appellant that the first respondent was working as a loadman cum salesman and while travelling in a

mini auto bearing Registration No.TN.33 E 8857, he met with an accident.

4. It is the contention of the learned counsel for the appellant-Insurance Company that the vehicle was not meant to carry passengers and in this case admittedly, the first respondent-claimant was sitting on the back side along with load and since the vehicle allowed only on seating capacity for the driver, the appellant cannot be made liable to pay compensation to the claimant.

5. In the present appeal, the appellant has raised the following substantial questions of law for consideration:-

> 1.Whether insurer can be directed to pay the compensation when the insurer is not expected to cover the risk of that person ?
>
> 2. Whether insurer can be directed to pay the compensation for a person travelling in the space provided for carrying goods in a goods vehicle that has seating capacity only for the driver?

6. The Deputy Commissioner of Labour relied on the decision of this court reported in United India Insurance Co., Ltd., vs K.M.Poonam and Others , 2011(1) TNMAC 441, while passing the impugned order. There it was held as follows:

> 36.The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle.

7. The learned counsel for the appellant submits that consent of pay and recover cannot be imported to compensate the amount awarded under the provisions of the Workmen's Compensation Act, 1923.

8. Under first proviso to Section 147 of the Motor Vehicles Act, 1988, an insurance policy need 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 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. The package policy covers only the liability of the third party and the owner of the vehicle and not an employee. Under Section 147 of the Motor Vehicles Act, it is clear that as an insurer of a vehicle the appellant would be liable to pay compensation to employees of insured in respect of the liability arising under the proviso of the Workmen's Compensation Act, 1923.

9. The appellant - Insurance Company may have a valid defence to avoid its liability under the insurance policy on the ground that the said policy covered only the risk of the owner of the vehicle namely the employer and not the employee. Thereafter, the appellant can pay and recover the amount from the owner of the vehicle as the vehicle was insured with the appellant insurance company. The amount involved in the appeal is also meagre and does not call for interference

10. Accordingly, the present civil miscellaneous appeal is partly allowed with liberty to the appellant-Insurance Company to initiate appropriate proceedings in accordance with law to recover the amount from the 2nd respondent-owner of the vehicle

uninfluenced by the observation in the impugned order passed by the Deputy Commissioner of Labour and by any other observations contained herein. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

The Deputy Commissioner of Labour,
and commissioner for Workmen's Compensation,
DCL, Salem.

+1cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.98613

C.M.A.No.2693 of 2012
and M.P.No.1 of 2012

EV(CO)
CS/30/01/2020