IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2640 of 2014

1. M.Jeyakodi
2. Minor M.Selvi
3. M.Ramasamy
4. Veerammal .. Appellants/ Petitioners1&2

(Minor 2nd appellant is represented by her Mother, 1st appellant)

vs.

1. I.Soundarapandi

2. The Oriental Insurance Co. Ltd., No.7, Uthamar Gandhi Salai, Nungambakkam, Chennai-34.

3. Thahira Ammal .. Respondents/ Respondents1 to 3

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the Award passed in W.C.No.71/2009 by the learned Deputy Commissioner of Labour-I, Chennai dated 23.10.2013.

For Appellants : Mr.F.Terry Chella Raja
For Respondents : No appearance

...

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923, against the Award passed in W.C.No.71/2009 by the learned Deputy Commissioner of Labour-I, Chennai, dated 23.10.2013, fixing the compensation payable to the appellants only by the owner of the vehicle, namely, the 1st respondent herein, instead of fixing the liability on the Oriental Insurance Company Limited, who is the 2nd respondent herein, the insurer of the vehicle-in-question.

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2. Learned Counsel appearing for the appellants assailing the impugned award submitted that when the deceased Muthuramalingam @ Saravanan died in an accident, his licence was also misplaced whereas the learned Deputy Commissioner of Labour finding that the driving licence of the deceased has not been produced before him, erroneously took a decision that the deceased was driving the vehicle without even possessing a valid licence. The learned Counsel further submitted that when the vehicle in question was sold on 25.04.2008 by the 3rd respondent to the 1st respondent, the accident took place on 11.05.2008. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in Firdaus vs. Oriental Insurance Company Limited and Others reported in 2017 (2) TN MAC 505 (SC), even if a vehicle stands transferred to the name of another person, the liability of the insurer to pay compensation will not cease. Therefore, the reason assigned by the Deputy Commissioner of Labour for fixing the liability on the 1st respondent is also liable to go since it is against the settled legal position for the simple reason that when the vehicle involved in the accident was insured by the 3rd respondent and there was an Insurance Coverage taken for the vehicle-in-question by the 3rd respondent, even if it is not transferred to the 1st respondent, the liability of the Insurance Company to pay the compensation cannot be questioned. Therefore, it is further pleaded that on that basis, while fixing the compensation of Rs.3,96,620/-, the Deputy Commissioner of Labour ought not to have directed the 1st respondent to pay the compensation which is impossible to be mobilised. Had it been otherwise, directed the Insurance Company to pay the compensation as fixed rightly in the present award with liberty to recover the same by adopting the Pay and Recovery Procedure.

3. Though notice was served on all the respondents including the Oriental Insurance Company and their names were printed in the Cause List, there is no representation for the respondents.

4. However, by following the ratio laid down by the Apex Court in Firdaus vs. Oriental Insurance Company Limited and Others reported in 2017 (2) TN MAC 505 (SC) holding that even if a vehicle stand transferred to the name of another person, the liability of the insurer to pay compensation will not cease, the appeal deserves to be allowed. Secondly, the reason cited in the impugned award for not directing the Insurance Company to pay the compensation that the licence of the driver of the vehicle was not produced is far from acceptance for the simple reason that when the driver also died in the accident and the claimants are only the legal heirs of

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the deceased, it would be highly improper on the part of the Deputy Commissioner to expect the production of the Driving Licence from the deceased. When the driver himself died, in all probability, the driving licence carried by him might have been misplaced in the accident. As I have mentioned above, with regard to the liability of the insurance company to pay the compensation to the appellants, it is also pertinent to extract the relevant paragraphs here under:

> "13.Even if it is assumed for the sake of arguments that vehicle was transferred from Defendant No.1 to Defendant No.4, there will be no consequence with regard to liability of Oriental Insurance Co. Ltd. to pay Compensation. The issue has been answered in Rikhi Ram Case (supra) also. The vehicle involved in the accident in the aforesaid case insured by another owner, namely M/s.Bhagwan Rai Amrit Lal, which was purchased by two other person subsequently. No intimation of transfer was given to Oriental Insurance Co. Ltd. The question arose in the above case, as to whether in absence of intimation of transfer to the Insurer the liability to pay the Compensation to the Third party shall cease. This Court held that even if vehicle stand transferred to the name of another person, the liability of Insurer to pay Compensation to Third party shall not cease....."

> 14. In Rikhi Ram case (supra), although this Court considered the provisions of Motor Vehicles Act, 1939, but the Motor Vehicles Act, 1988 also contains the similar provisions under Sections 146, 147 and 157 of the act. Hence, the ratio of Judgment in Rikhi Ram case is fully applicable in the facts of the present case also.

> 15. Section 157 of the Motor Vehicles Act, 1988 clinches the issue. Section 157 sub-section (1) contains the deeming provision that 'the Certificate of Insurance and the Policy described in the Certificate shall be deemed to have been transferred in favour of the person to whom the Motor Vehicle is transferred with effect from the date of this transfer" Sub-section (1), Section 157 which is relevant is quoted as below:

> "157. Transfer of Certificate of Insurance.-- (1) Where a person in whose favour the Certificate of Insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the

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Motor Vehicle in respect of which such Insurance was taken together with the Policy of Insurance relating thereto, the Certificate of Insurance and the Policy described in the Certificate shall be deemed to have been transferred in favour of the person to whom the Motor Vehicle is transferred with effect from the date of its transfer.

"Explanation. -- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said Certificate of Insurance and Policy of Insurance".

5. A perusal of the above provision and the judgment cited supra clearly shows that even if a vehicle stands transferred to the name of another person, liability of the insurer to pay compensation will not cease. While so, in the present case, the vehicle in question was sold on 25.04.2008 by the 3rd respondent to the 1st respondent and the accident took place on 11.05.2008, therefore, the liability of the insurer to pay compensation will continue.

6. In view of all the above, since the law is well settled and the award passed by the learned Deputy Commissioner of Labour-I, Chennai, is against the aforementioned settled legal position, the impugned award dated 23.10.2013 passed by the learned Deputy Commissioner of Labour-I, Chennai is modified, thereby directing the Oriental Insurance Company to pay the compensation of Rs.3,96,620/- to the claimants/appellants along with interest at 12% p.a. after 30 days from the date of accident till the date of realisation with liberty to recover the same from the 1st respondent by adopting the Pay and Recovery Procedure.

7. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I), Chennai-600 006.

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

+1cc to Mrs.M.Malar , Advocate SR.No. 70561

C.M.A.2640 of 2014

A.SK(22/10/2019)

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