

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.296 of 2006

and

C.M.P.No.948 of 2006

M/s.United India Insurance Company Limited,
25, Dempin Eswar,
82, North Mada Veedhi,
Mylapore, Chennai - 4. ... Appellant

vs

1.K.Sundar

2.Ramani Guruji Asramam,
'Nerballi' Alamelupuram
Camp Road, East Tambaram,
Chennai.

3.M/s.Hartharan Foundations (P) Ltd.,
5, Sreeram Nagar South Street,
Chennai - 18.

4.M/s.Babu Arts,
114, Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 15.06.2005 made in W.C.No.85 of 2004 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour - I) at Chennai.

For Appellant : Mr.R.Ravichandran

For R1 : Mr.Mahendran

For R2 & R4 : Given up

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 15.06.2005 passed by the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour -I), Chennai in W.C.No.85 of 2004.

2.By the impugned order, the Deputy Commissioner of Labour-I has awarded a sum of Rs.2,87,645/- to the 1st respondent as compensation.

3.The appellant Insurance Company had insured the 3rd respondent. The 1st respondent worker claimed that he was employed by the 3rd respondent for carrying painting the premises of the 2nd respondent. The 1st respondent claimed that he suffered injury and therefore filed claim petition during January 2004 for compensation under the Workmen's Compensation Act, 1923.

4.The Deputy Commissioner of Labour - I allowed the claim petition filed by the 1st respondent based on the FIR. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed by the appellant Insurance Company.

5.In the present appeal, though the appellant has raised ten substantial questions of law, this Court while admitting the appeal has framed the following four substantial questions of law to be considered:-

- i. Whether the learned Commissioner has failed to note that the claimant was not employed by the II opposite party but was employed by a contractor III Opposite party herein?
- ii. Whether the learned Commissioner failed to note that the claimant had sustained injuries while painting the bursae of the relative the Founder of I Opposite Party and hence excluded from the scope of the Policy?
- iii. Whether the learned Commissioner has failed to note that the II Opposite Party ought to have paid necessary premium to include the workmen of sub contractors also and in the absence of the same they are guilty of suppression of material particulars and the policy is void from inception?
- iv. Whether the learned Commissioner has failed to note that the Doctor had not assessed the disability either in accordance with Schedule II of the WC Act or in accordance with the Central Government Gazette Notification to assess the handicapped persons and the evidence of the regular witness, which is inflated cannot be relied or accepted?

6.The learned counsel for the appellant has questioned the order on the ground that the 1st respondent was not employed with the 3rd respondent and therefore, the appellant cannot be fastened the liability.

7.The learned counsel for the appellant further submitted that the 1st respondent has withdrawn the amount deposited by the appellant subsequent to the order of the Deputy Commissioner of Labour - I and therefore, submits that the present Civil Miscellaneous Appeal may be disposed giving liberty to the appellant Insurance Company to initiate appropriate proceedings to recover the amount from the other respondents in accordance with law.

8.In view of the above submissions, the present Miscellaneous Appeal is disposed with liberty to appellant Insurance Company to initiate appropriate proceedings to recover the amount from the 2nd to 4th respondents in accordance with law. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Workmen Compensation
(Deputy Commissioner of Labour - I),
Chennai.

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

+1cc to Mr.R.Ravichandran, Advocate Sr.89913

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srg 05/12/2019