

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2762 of 2017 and
C.M.P.Nos.15652 and 17967 of 2017

United India Insurance
Company Limited,
No.134, Greams Road,
Chennai - 6

... Appellant

Vs.

1. A.Selvi
2. Minor A.Gomathi
3. Minor A.Premkumar
4. Minor A.Kesavan
(Minors Rep by their Mother 1st Respondent A. Selvi)
5. T.Kannammal
6. M/s Gemini Enterprises,
No.114/B, Velur Road,
Vaddukkpatti, Viralimalai,
Puddukottai District

... Respondents

Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923 to set aside the final award dated 08.05.2017 passed by the learned Deputy Commissioner of Labour - II, at Chennai in E.C.No.231 of 2014 and to dismiss the claim petition.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.M.Swamikannu

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J U D G M E N T

The appellant has filed the present Civil Miscellaneous Appeal under Section 30 of the Employees Compensation Act, 1923 to set aside the final award dated 08.05.2017 passed by the learned Deputy Commissioner of Labour - II, at Chennai in E.C.No.231 of 2014 and to dismiss the claim petition.

2. The case of the respondents / claimants is that one Alagarsamy, was employed by the 6th respondent and on 28.01.2014 at about 15.30 hrs, while proceeding into the crane bucket downwards along with three others for the purpose of digging the well, due to bad maintenance and mechanical operations of the said crane by its operator, the rope had detached and fell down about 80 feet below, due to which, all of them sustained severe injuries all over the body and immediately, while the said Alagarsamy was taken to Government General Hospital, Tiruchi, he died on the way and postmortem was conducted on the next day, i.e., 29.01.2014 and the police authorities have registered a case in Crime No.21 of 2014. Further, the said Alagarsamy was 36 years old at the time of accident and he was a daily wage employee, earning a sum of Rs.750/- per day and his average earning was about Rs.20,000/- per month. Also, by stating that the said Alagarsamy is only the sole breadwinner of the family, the claimants, who are the wife, children and mother of the deceased has filed a claim petition claiming a sum of Rs.56,00,000/-

3. Denying the averments of the respondents / claimants, the 6th respondent has filed a counter affidavit stating that after owning the crane for six years, the management had decided to dispose the crane, as it was lying idle and the same was sold to one Mr.Subramani, on 20.01.2014 and hence he is the absolute owner of the crane. However, the said Subramani had not done the necessary procedure for transferring his name in the RC book and in view of the same, the 6th respondent cannot be made liable for the fault of the said Subramani. Further, the FIR, does not contain the name of the 6th respondent and a perusal of RC Book also shows that the said Subramani has remitted tax for the period 01.04.2014 to 31.03.2015 and this proves that he is the owner of the crane. The 6th respondent cannot be considered to be an employee under Employees Compensation Act and thereby sought to dismiss the claim petition.

4. Per contra, the appellant / 2nd respondent has filed a counter affidavit stating that the deceased is not the employee of the 6th respondent and the entire burden lies on the claimants to prove the same. There is no wages and attendance register provided by the claimants and in order to cheat the appellant / insurance company, the claimants in collusion with the 6th respondent has filed this petition by misusing the policy. The deceased was employed by one Palanisamy, who is the owner of the land, to dig the well on contract basis. The employer and employee relationship is only between the deceased and the said Palanisamy and the said Palanisamy had spent the transport and funeral expenses to the tune of Rs.50,000/- to the deceased and also paid a sum of Rs.3,00,000/- to the 1st

respondent as compensation and the crane was hired by the said Palanisamy for hour rent. The claimants can proceed against the said Palanisamy and the crane is used only for lifting the goods and not for lifting the human beings. As per law, the human being lift is covered by four walls with operator or automatic operation. Further, the policy had covered for the period from 24.09.2013 to 23.09.2014 and it is Liability Only Policy covered only to the third party, who would sustain injury in the road accident hit by the crane and there is no such insurable contract between the appellant and the 6th respondent.

5. The learned Deputy Commissioner for Employees Workmen Compensation, Labour II, Chennai, after considering the pleadings, counter affidavits and the materials placed on record, had awarded a sum of Rs.7,40,994/- to the respondents/claimants with interest at 12% per annum and the same was directed to be withdrawn from the 6th respondent. Aggrieved against the same, the appellant/2nd respondent has come up with the present appeal before this Court.

6. This Court, on 14.09.2017, while admitting the appeal, has raised the following substantial question of law and directed the learned Deputy Commissioner for Employees Workmen Compensation, Labour II, Chennai to withhold the payment of Rs.9,91,841/-, which was deposited pursuant to the order passed in E.C.No.231 of 2014 dated 08.05.2017.

'Whether the learned Deputy Commissioner for Employees Workmen's Compensation, Labour II, Chennai was right in directing to pay and recover when admittedly the policy Ex.R.2 is only an act policy which covers liability in respect of 3rd party alone?.'

7. The learned counsel for the appellant submits that the Deputy Commissioner of Labour had failed to consider the categorical pleading of the 6th respondent stating that the said crane belongs to one Subramani. Further, the Commissioner had also failed to notice the fact that as per Ex.P.1 - FIR, the brother of the deceased had asserted that the deceased was employed under one Mr.Vijayakumar and not under the 6th respondent.

8. The learned counsel for the appellant contends that the Commissioner had failed to appreciate the fact that the statutory coverage is provided to an employee in terms of Proviso (i)(c) Section 147(1) of Motor Vehicles Act, 1988, 'Only if it is a goods carriage and being carried in the vehicle'. Also, as per Ex.R.2, Insurance Policy, no additional coverage was provided to the employees of the insured, but the Commissioner had burdened the liability on the appellant. The Commissioner, without even considering the fact that the

appellant was not put on notice with regard to the alleged accident on 28.01.2014, either by the respondents or the owner of the crane had passed the order and thereby pleaded to set aside the order passed in E.C.No.231 of 2014 by the learned Deputy Commissioner of Labour, Chennai.

9. Heard the learned counsel for the respondents on the submissions of the learned counsel for the appellant. The learned counsel for the respondents has relied on the Judgment of High Court of Delhi at New Delhi reported in 2018 ACJ 2349 Brijesh Kumar Verma V. Aurangjeb and Another.

10. It is seen from the counter averments of the 6th respondent that the crane was owned by them for six years and after that, the same was lying idle. Thereafter, the Management had decided to disburse the said crane and had sold to one Subramani in the year 2014. The 6th respondent had also proceeded to state that the said Subramani has not changed the owner's name by making necessary entries in the record and has not transferred the name in the RC Book and hence, the ownership of the crane still lies in the name of the 6th respondent, by stating so, the 6th respondent cannot wash away their hands from the responsibility.

11. Even though the said Subramani, who is said to be owner of the crane has remitted tax from 01.04.2014 to 31.03.2015, but in the RC Book, the name has not been changed and the owner of the vehicle still remains in the name of the 6th respondent, viz., Gemini Enterprises. The accident occurred while operating the crane because the same was not properly maintained and the persons in the bucket fell down, due to which the said person, viz., Alagarsamy died. Further, the insurance policy stands in the name of the 6th respondent and their name finds place in the RC Book and they are liable for compensating the deceased person, who had met with an accident. The 6th respondent cannot state that the deceased person was employed by one Palanisamy, who was working under him, the employee and employer relationship exists between them and he is alone liable to pay, is not accepted. The policy coverage was for the period from 24.09.2013 to 23.09.2014 and the contention of the 6th respondent that the insurance policy covers for accidents, that happens to third parties while the crane is driven on the road and it is not liable to compensate against these claim, is to be considered.

12. It is seen from the Insurance policy that the liability could be exercised within the meaning of motor vehicles act or such a carriage falling under Sub Section 3 of Section 66 of the Motor Vehicles Act, 1988. The limits of liability under Section II-I(i) is, Death or bodily injury in respect of any accident,

and under Section II-I(ii) is, Damage to third party property in respect of any one claim or series of claims arising out of one event Rs.7,50,000/-. Therefore, it is clear appellant / insurance company is not liable to pay any compensation to the claimants and the 6th respondent is liable to compensate for them. This Act policy does not cover the accidents claimed under the Workmen compensation Act and covers only the driver of the vehicle or third party, who gets injured or death while the said vehicle is driven on the road, hence the said vehicle owner / 6th respondent alone is liable to compensate.

13. As 6th respondent's name stands as the owner of the vehicle, as per records, the Insurance company is permitted to pay and recover the same. The final award dated 08.05.2017 passed by the learned Deputy Commissioner of Labour - II, at Chennai in E.C.No.231 of 2014 is modified as stated above. The claimants are also permitted to withdraw their respective shares.

14. In view of the above observations, the present Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner of Labour - II
Chennai

Copy to

The Section Officer,
VR Section,
Madras High Court,
Chennai

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 91009.

+1 CC to Mr.M.Swamikannu, Advocate sr 91255.

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BS(CO)
SP(02/12/2019)