



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD).No.203 of 2009 and M.P(MD).No.2 of 2009

WEB COPY

The Branch Manager,
National Insurance Company Limited,
No.135-1, Rose Building Main Road,
Kovilpatti - 628 501.

.. Appellant / 2nd respondent

.. Vs ..

1.Anbu ...1st respondent / petitioner
2.Rajajeya ..2nd Respondent / 1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation (Deputy Commissioner of Labour) Tiruchirappalli dated 12.08.2006 passed in W.C.No. 188 of 2005 and served on the appellant on 16.10.2006.

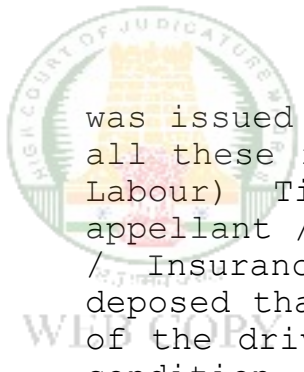
For appellant : Mr. J.S. Murali
For 1st respondent : Mr.D. Gurusamy

JUDGMENT

Challenging the liability fixed on the appellant / Insurance Company in W.C.No. 188 of 2005 by the Workmen's Compensation (Deputy Commissioner of Labour) Tiruchirappalli, dated 12.08.2006, they have filed the present Civil Miscellaneous Appeal.

2. This is a case of fatal. On 25.01.2005, while the deceased / the husband of the first respondent herein, was travelling as a cleaner in the 2nd respondent's / 1st respondent's Lorry bearing Regn.No. TN-67-W-7182, from Karaikal to Tuticorin, the said Lorry suddenly dashed against a tamarind tree standing in a side of the road. In the said accident, first respondent's husband has sustained multiple injuries and subsequently, died.

3. It is the contention of the appellant / Insurance Company that the deceased viz., Rajan @ Samarajan was neither cleaner nor driver of the Lorry bearing Regn.No. TN 67 W 7182, which was insured with the appellant / Insurance Company. Immediately after the accident, one Manikandan has given a complaint against the driver of the Lorry stating that he worked as a cleaner and the deceased worked as a substitute cleaner. The main contention of the appellant is that the substitute cleaner is not covered by the Policy issued by the appellant / Insurance Company. According to the appellant, the Policy is covered only to the driver as well as cleaner and except these two persons, no insurance policy coverage



was issued by the appellant / Insurance Company. Without considering all these facts, the Workmen's Compensation (Deputy Commissioner of Labour) Tiruchirappalli, wrongly fixed the liability on the appellant / Insurance Company. The policy issued by the appellant / Insurance Company is a comprehensive policy. PW.2-Ramkumar deposed that the accident occurred due to rash and negligent driving of the driver of the Lorry. As there is a violation of the Policy condition, the Insurance company is not liable to pay the compensation. Therefore, the liability fixed by the appellant / Insurance Company is liable to be set aside.

4. On the other hand, the learned counsel appearing for the first respondent / claimant would contend that the Court below has rightly come to the conclusion that the Insurance Policy is not only covering the driver and cleaner, but also seven more persons, as stated in Section 236 of the Tamil Nadu Motor Vehicles Rules. Therefore, he contended that fixation of the liability as against the driver of the vehicle and thereby fixing the liability and directing the appellant / Insurance Company to pay the compensation is just and fair and there is no need to interfere with the order passed by the Court below.

5. I have heard the learned counsel appearing for the appellant as well as the first respondent and perused the materials available on record.

6. The main issue to be decided in the present Civil Miscellaneous Appeal is (a) whether the substitute cleaner of the Lorry is covered under the policy issued by the appellant or not. (b) Whether the substitute cleaner is an employee of the employer?

7. The first issue is concerned, admittedly, the deceased Rajan @ Samarajan was travelled in the Lorry as substitute cleaner. Now, the issue to be decided is whether the substitute cleaner will be covered under policy. According to the appellant, the policy is covered only to the driver and cleaner of the Lorry. On the other hand, the learned counsel appearing for the first respondent / claimant would submit that apart from the driver and cleaner of the Lorry, 7 more persons can be travelled and hence, the appellant is liable to pay compensation to the substitute cleaner also.

8. No doubt, the policy was issued by the insurers against the insure is a comprehensive insurance policy. The policy covers both the driver and the cleaner. In the present case, the cleaner was substituted by a substitute cleaner, so, at that point of time, the accident was occurred. Therefore, the Insurance Company contended that the policy covers only for the driver and cleaner and not for the substitute cleaner.

8.1 The learned counsel for the insurance company has clearly stated that the policy, nothing has been mentioned about the name
<https://hcservicescourts.hcsa.in/hcservices/>



of the driver and the cleaner. The coverage is only for driver and cleaner.

8.2 By referring the same, the learned counsel appearing for the claimant would contend that cleaner means a person who was occupying the position of the cleaner in the Lorry at the time of accident. In the present case, the substitute cleaner was occupying the position of the cleaner at the time of accident. Therefore, the substitute cleaner is clearly comes under the purview of the coverage. Hence, this Court is of the view that the appellant Insurance Company is liable to pay compensation to the substitute cleaner. When such being the case, the liability fixed by the Workmen's Compensation (Deputy Commissioner of Labour, Trichy) does not requires any interference by this Court.

9. As far as quantum of compensation is concerned, there is no dispute. Therefore, the Award passed by the Workmen's Compensation (Deputy Commissioner of Labour) Tiruchirappalli is hereby confirmed.

10. The appellant / Insurance Company is directed to deposit the entire award amount to the credit of W.C.No. 188 of 2005 on the file of Workmen's Compensation (Deputy Commissioner of Labour) Tiruchirappalli, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited if any. On such deposit, the Court below is directed to transfer the entire amount to the first respondent's / claimant account by way of RTGS, within a period three weeks thereafter.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

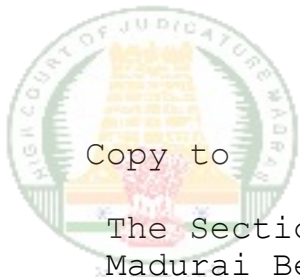
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Sub Assistant Registrar(CS)

trp
To

The Workmen's Compensation
(Deputy Commissioner of Labour)
Tiruchirappalli.



Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1cc to Mr.D.Gurusamy, Advocate Sr.No.98729

+1cc to Mr.J.S.Murali, Advocate Sr.No.98759

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M.P(MD) .No.2 of 2009
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VB(10.02.2020) 4P 6C