IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2887 of 2015
and
M.P.No.1 of 2015
and
C.M.P.No.16701 of 2016

The United India Insurance Company Limited,
Singhvi Complex,
No.163, Greams Raod,
Chennai - 600 006. ... Appellant/2nd Respondent

Vs.

1.K.Gunasekaran

2.G.Pachaiyammal
All are residing at,
Kmethichavadi @ Panichammedu,
Anumanthai P.O., Tindivanam Taluk,
Villupuram District. ... 1st & 2nd Respondents/Claimants

3.R.Narayanan ..3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.4346 of 2012, dated 23.01.2015, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.C.Harini
For Mr.N.Vijayaraghavan

For Respondents: R1 & R2 - Mr.S.Parthasarathy
R3 - No such address

J U D G M E N T

The appeal on hand is filed against the judgment and decree dated 23.01.2015 passed in M.C.O.P.No.4346 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2. The accident occurred on 24.02.2012 at about 9.30 hours at Santhavellore, Opposite to Karthik Hotel in C-2, Sunguvar Chathiram Police Station. The case was registered in Crime No.123 of 2012 and the victim sustained fatal injuries and died on the spot. The deceased was aged about 19 years and he was working as a Cleaner in the Crane and under those circumstances, the Claim Petition was filed, seeking a total compensation of a sum of Rs.15,00,000/-.

3. The learned counsel appearing on behalf of the appellant mainly raised the ground that the appellant/Insurance company raised the point of liability as there is no Policy coverage for the Cleaner working in a Crane. As per the Policy, the Driver alone is covered and there is no Insurance coverage for the Cleaner of the vehicle and therefore, the Tribunal has committed an error in holding that the Cleaner of the Crane vehicles is also covered under the policy issued by the appellant / The United India Insurance Company Limited. The Crane vehicle is having the seating capacity of one person and the premium of a sum of Rs.25/- for one employee could be construed as coverage and more specifically, driver alone. Thus, the driver of the Crane alone is covered under the Insurance Policy and the Cleaner is not covered under the Insurance Policy. Thus, the Tribunal has committed an error in granting compensation in favour of the Cleaner in the absence of the Policy coverage.

4. The learned counsel appearing on behalf of the respondent/Claimant contended that the Tribunal considered the Cleaner as a third party and once, the Cleaner is treated as a third party, then the coverage is available and therefore, there is no error apparent in the award and the appeal is to be dismissed.

5. The learned counsel for the respondent/claimant referred the findings of the Tribunal in Page No.13 of the typed set of papers filed along with the appeal, wherein the Tribunal made a finding as under:

> "Whereas during cross examination, R.W.1 admitted that "உரிமையாளர் மற்றும் ஓட்டுனருக்கு ரூ.100/- பிரிமியம் வாங்கியுள்ளோம், அதற்கு கீழ் டபள்யூ சி எம்ப்ளாயர் 1-ரூ.25/- பிரிமியம் வாங்கியுள்ளோம் என்றால் சரி, கிரேனில் சீட்டிங் கெப்பாசிட்டி ஒன்று தான், ஓட்டுனருக்காக தான் அது வாங்கப்பட்டது, ஓட்டுனருக்கு மட்டும் தான் ரூ.25/- பிரிமியம் வாங்கப்பட்டது என எ.ம.சா.ஆ.1-ல் சொல்லவில்லை, விபத்தில் இறந்த நபர் இந்த வழக்கில் 3-ம் நபராக கருதப்படுவார் என்றால் சரி." So as per the evidence of R.W.1., the deceased is a third party to the Insurance policy, as insurer of the 1st respondent's vehicle, the 2nd respondent is liable to pay the compensation and this point is answered accordingly."

6. Relying on the above findings, the learned counsel appearing on behalf of the respondent/Claimant reiterated that there is a third party coverage in the policy and the deceased was treated as a third party and accordingly, the compensation was awarded by the Tribunal.

7. This Court is of the considered opinion even as per the Claim Petition and during the deposition, it is clarified that the deceased was working as a Cleaner in the Crane. Even presuming that he was working in the Crane, and standing nearby the Crane, it is to be construed that he was under the employment of the owner of the Crane and he was assisting the Driver to operate the Crane at the time of accident. However, a Cleaner cannot be construed as a third party for the purpose of claiming compensation. A Person cannot file a Claim Petition, clearly stating that he was working as a Cleaner and his salary was Rs.10,000/- and further, he had stated that the name and the address of the employer and other details, thereafter, he cannot come and say that the deceased should be treated as a third party and the compensation to be awarded.

8. Insurance Policy is a contract. The statutory contract is governed under the provisions of the Motor Vehicles Act and Rules. Undoubtedly, the Crane Driver is covered under Section 147 of the Motor Vehicles Act, 1988 and as per the Insurance Policy, Ex.R2, the driver of the crane alone is covered and there is no coverage for the Cleaner or the Helper under the Insurance Policy, which was marked before the Motor Accident Claims Tribunal.

9. The evidence of R.W., namely Mr.T.Murugesan, Senior Assistant Legal, also reveals that there was no Insurance Company policy coverage and therefore, the deceased Cleaner is not entitled for compensation under the Motor Vehicles Act. The premium was also paid only for one person namely Driver and therefore, as per the evidence produced before the Tribunal, absolutely, there is no policy coverage as far as the Cleaner of the Crane is concerned.

10. The contractual liability of the Insurance Company cannot be extended, based on certain presumptions and assumptions. Factual inferences cannot be drawn for the purpose of awarding compensation, in view of the fact that the statutory contracts are to be read with reference to its terms and conditions and the Court cannot go beyond the scope and the spirit of the terms and conditions for the purpose of awarding compensation under the Insurance Policy. Thus, it is unambiguous that the policy coverage is an important factor to be ascertained at the first instance for the purpose of considering the Claim Petition filed under the Motor Vehicles Act. In the

absence of Policy coverage, the Tribunals are not empowered to grant compensation by drawing such a factual inferences and by converting the Cleaner as a third party for the purpose of awarding compensation. Such conversion is impermissible. When the Claim Petition itself is filed, based on certain definite facts with factual details, then such facts or details cannot be altered or inferred for the purpose of granting compensation.

11. In the present case, perusal of the Claim Petition reveals that the deceased person was aged about 19 years and he was working as a Cleaner in a Crane and his monthly income was Rs.10,000/-. The details of the employer, the monthly income and the designation are unambiguously stated in the Claim Petition and further, the oral evidences also reveals that the deceased was working as a Cleaner in the Crane.

12. Under these circumstances, the Tribunal has committed an error in arriving a conclusion that the Cleaner of a Crane is to be treated as a third party for the purpose of grant of compensation. The Tribunal arrived a conclusion that the deceased is a third party to the Insurance Policy and therefore, the claimants are entitled for compensation. Such a decision was arrived, based on the Cross examination of R.W.1.

13. R.W.1, during the Cross examination, has stated that the deceased is to be treated as a third party. Relying on the statement of R.W.1, the Tribunal arrived a conclusion that the deceased is to be treated as a third party to the Insurance Policy and accordingly, compensation is to be granted.

14. When the Claim Petition reveals that the deceased was a Cleaner in the Crane and employee may be the Crane owner and he was performing his duties and responsibilities at the time of accident, then the Tribunal cannot go beyond the scope of the Claim Petition and arrived a conclusion that the deceased is to be treated as a third party. Mere statement of R.W.1 is insufficient in view of the fact that under Section 147 of the Motor Vehicles Act, the coverage is only for the Driver. As far as the Crane is concerned, there is no coverage for the cleaner under the policy. Such an analogy is accepted, then in all such cases, the Cleaners are to be treated as a third party for the purpose of award of compensation and such a proposition is directly in violation of the contractual obligations and in violation of the terms and conditions of the Insurance Policy and in the absence of the Policy Coverage, the compensation cannot be granted by the Tribunal. Undoubtedly, the employee can claim compensation under the Workmen Compensation Act, if he is otherwise eligible under the provisions of the Workmen Compensation Act. However, the compensation granted under the Insurance Policy is not in accordance with the terms and

conditions of the Policy and in violation of the Motor Vehicles Act. Therefore, the findings of the Tribunal in this regard, treating the deceased person as a third policy is not in accordance with the policy coverage and therefore, the finding is perverse and unsustainable in law.

15. In view of the reasons stated, this Court has no hesitation in arriving a conclusion that the Tribunal has committed an error in treating the Cleaner of the Crane as a third policy for the purpose of award of compensation.

16. Accordingly, the judgment and decree dated 23.01.2015 passed in M.C.O.P.No.4346 of 2012 is set aside and consequently, the Civil Miscellaneous Appeal in C.M.A.No.2887 of 2015 stands allowed. The awarded amount already deposited by the appellant / Insurance Company before the Tribunal is to be reimbursed. In this regard, the appellant / Insurance Company is permitted to withdraw the said amount by filing an appropriate application. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Kak

To

1.II Court of Small Causes ,
(Motor Accidents Claims Tribunal),
Cuddalore.

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

C.M.A.No.2887 of 2015

RR(CO)
GN(05/05/2021)