IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.1788 of 2016

The New India Assurance Company Limited.,
No.770, Anna Road,
Chennai - 600 002. ...Appellant/2nd Respondent

vs.

1. M.Praveena
2. M.Deepeth (Minor)
3. M.Narayanammal ...Respondents 1 to 3/Petitioners
4. Mr.Harichandra Raju ...4th Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 30 of W.C. Act 1923 to set aside the Order dated 13.04.2016 passed in E.C.No.8 of 2015 by the Commissioner for Employees Compensation - I (Deputy Commissioner of Labour - I) Chennai - 600 006 and to dismiss the application filed for compensation by the respondents 1 to 3 against the appellant.

For Appellant : Mr.C.Ramesh Babu
For Respondents : --

O R D E R

The present appeal has been preferred challenging the Order of the Workman Compensation Depety Commissioner - I dated 13.04.2016 in E.C.No.8 of 2015.

2. The sum and substance of the case is that the deceased was employed under one Harichandra Raju, who is the fourth respondent herein and the first respondent before the authority concerned. While cleaning the drainage on 04.07.2014, around 5.30 p.m., the deceased inhaled poisonous gas, admitted in Appolo Hospital and on account of the incident arising out of and in the course of his employment, he passed away on 10.07.2014. After postmortem at Stanley Hospital, body was returned and final rites were done. According to the legal representatives of the deceased, before the authority, the deceased was drawing a sum of Rs.6000/- per month and was 40 years old on the date of his demise. It is further submitted that there was an insurance policy by the appellant herein, policy bearing No.710404/36/14/01/00000054 and it was in force from 05.06.2014 to 04.09.2014 and the dependants are entitled to

the amount of compensation apart from the medical expenses incurred by the family of the deceased.

3. The first opposite party before the first respondent has stated that the deceased was employed under him and that there was an accident on 04.07.2014, while the deceased was cleaning drainage and poisonous gas was inhaled by the deceased which had caused the death of deceased and that he has taken a policy which is a valid one and that the first opposite party before the authority was paying a sum of Rs.8000/- per month as wages to the deceased.

4. The second opposite party before the authority, who is an insurance company, has contended that there was no employer employee relationship between the deceased and first respondent before the authority and that the injuries sustained by the deceased has not been established that the accident arise out of and in the course of employment and as there was no death on account of inhalation of poisonous gas as stated by the legal representatives of the deceased, there is no need for the insurance company to pay any compensation much less one demanded by the claimants.

5. The authority after taking evidence, based on exhibits, more particularly the First Information Report and the policy which was marked as Ex.P.5 and which was valid from 05.06.2014 to 04.09.2014, awarded a compensation of Rs.7,41,680/- apart from a direction to pay a sum of Rs.7,52,927/-for the medical expenses incurred by the deceased family.

6. Aggrieved by the Order, the present Civil Miscellaneous Appeal has been filed raising two grounds. Firstly, though the employment was disputed, the authority has rendered a finding of fact which cannot be interfered with. The first applicant before the authority was the father of the deceased and that a policy was taken which was valid for a period of three months and the same was in force on the date of the accident and that the death of the deceased had occurred while the deceased was in employment. However, policy has been taken restricting the premium for a sum of Rs.4000/- per month and even though as an employee he is entitled to compensation by taking into account the wages at Rs.8000/- per month which is prevalent. The insurance company is liable to pay compensation only to an extent of Rs.4000/- per month and the remaining amount has to be borne by the employer as the policy has not been taken for the entire amount. That apart, the insurance company is not a contractor, who is liable to pay the amount and get the amount reimbursed. There is no clause in the policy enabling reimbursement of the medical expenses in the present case on hand. That being the case, the authority foisting the liability

to repay the medical expenses is illegal and the Order has got to be interfered with. Secondly, in the absence of any clause in the policy, the authority was not right in foisting the liability on the respondent, the insurance company and the finding to pay a sum of Rs.7,52,927/- that refers to the medical expenses incurred by the deceased family.

7. The learned counsel appearing for the claimant would submit that the maximum amount prescribed under Act is Rs.8000/- and based on which the compensation has to be paid. There is nothing wrong in the insurance company paying the amount and recover the same from the employer.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the records available on record.

9. The fact that the first respondent is the father of the deceased is not in dispute. It is also not in dispute that on account of inhaling of the poisonous gas while working in drainage, the deceased suffered injury on 04.07.2014 and that has arisen out of and in the course of employment and on account of failure in treatment, the deceased passed away on 10.07.2014. There is also a policy was force in between 05.06.2014 and 04.09.2014. The issue is whether the entire amount has got to be paid by the insurance company or a proportionate amount has to be paid. As the aforesaid facts are not in dispute, this Court would have confirmed the Order of the Authority, if the premium is paid for Rs.8000/- per month. But, as the employer has paid only premium to an extent of Rs.4000/-, the liability to pay the compensation to the deceased family by the insurance company is restricted only to Rs.4000/-. It does not mean that the deceased family is entitled to compensation taking into account the premium paid by the employer. For the remaining amount of Rs.4000/-, it is the employer, who has to pay the amount. The insurance company cannot be fastened with the entire liability. The claim of the legal representatives that with regard to reimbursement of medical expenses in the policy is concerned, unless there is a specific clause with regard to reimbursement of medical expenses, insurance company cannot be fastened with the liability to pay the medical bills as Ordered by the authority to an extent of Rs.7,52,928/-. Hence, I am of the view that the Order of the Authority is liable to be interfered with.

10. Firstly, the insurance company is liable to pay the compensation by taking into account the wages as Rs.4000/- and remit the amount to the Authority, if not already deposited, which is payable to the deceased family. For the remaining amount of Rs.4000/- and medical bills, the deceased family is

entitled to get it recovered from the employer, as a clause has not been provided in the insurance policy with regard to the medical reimbursement.

11. The amount, if any, deposited, the authority shall release compensation to an extent of premium of Rs.4000/- along with interest at the rate of 12% from the date of accident till the date of payment, alone is liable to be payable by the insurance company to the dependants and the remaining amount, if already deposited shall be retained by the authority and disburse the amount to the appellant, insurance company. It is open to the legal representatives to claim compensation of the balance amount to the remaining extent of Rs.4000/- from the employer. The remaining amount together with the medical bills amount deposited by the insurance company is liable to be refunded to the insurance company within one month from the date of receipt of a copy of this Order.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

13. If the entire amount has already been paid to the dependants, after dependants enquiry, the insurance company can get back the proportionate amount mentioned supra, by using police force, in the light of the decision of this Court in Radhika Sri Hari Vs. The Commissioner of Police, Coimbatore reported in 2014 (2) CTC 695, from the employer. Though the judgment cited is regarding vacation of the premises, the same principle will be applicable here also as there is no need for the insurance company to be driven to another Court proceedings and litigate for decades.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To
The Deputy Commissioner - I,
Workman Compensation - I,
Chennai - 6.

+1 cc to M/s.C.Ramesh Babu, Advocate, S.R.No.6476
+1 cc to M/s.C.Prabakaran, Advocate, S.R.No.6571

C.M.A.1788 of 2016

RSI(CO)
RN(23/07/2020)