IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1771 of 2009

and

M.P.No.1 of 2008

Vijendran ..Appellant

Vs.

1.Kavundiannan

2.The National Insurance Company Limited,
13, Minu Complex,
Main Road, Kasabadi,
Korba,
Korba District - 4956779 ..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the order dated 31.08.2007 in W.C.Case No.404/2005 passed by the Deputy Commissioner of Labour, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.Ravichandran[For R2]
No appearance[For R1]

J U D G M E N T

The Award dated 31.08.2007 passed in W.C.No.404 of 2005 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant filed the appeal on the ground that he was working as a driller with the first respondent prior to one year from the date of accident. On 22.01.2005 at about 7.30 p.m, as per the instructions of the first respondent, the appellant set a point to dug up a bore well at Laxmi Traders, Jakkad Nakka, Valsad Road, Dharampur in Gujarat State. He sustained injuries on account of the accident and was taken to Vikramsingh Hospital at Dharampur and first aid was given. Thereafter, the appellant was shifted to L.K.M.Hospital at Erode and admitted as an inpatient. The petitioner took treatment from 25.01.2005 to 31.01.2005 and thereafter, had taken treatment as out patient.

3. The application was filed, claiming compensation. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences elaborately. The ground raised by the appellant is that exoneration of the second respondent Insurance company from liability is erroneous. The Deputy Commissioner of Labour fixed the liability on the first respondent, who was the owner of the vehicle and therefore, the claimant has preferred an appeal. Though the aggrieved person is the owner of the vehicle, the appellant has chosen to file the appeal, supporting the contentions of the first respondent/owner of the vehicle.

4. As far as the liability is concerned, the Deputy Commissioner of Labour elaborately adjudicated the issues. The Second respondent Insurance company disowned their liability for compensation on the basis of the exclusion clause in the policy as per the India Motor Tariff clause 52. The certificate of Insurance (Ex.R1) together with the India Motor Tariff Endorsement No.52, the liability for paymnet of compensation by the 2nd respondent Insurance company becomes upside down. The policy contains endorsement No.52, which reads as under:

> "IMT 52. EXCLUSION OF DAMAGE WHILE IN USE AS A TOOL OF TRADE:
>
> It is hereby declared and agreed that except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, the insurer shall be under no liability under Section II of this policy in respect of liability incurred by the insured arising out of the operation as a tool of the motor vehicle or of plant forming part of the vehicle insured or attached thereto."

5. The liabilities covered by the policy were the liabilities required to be covered by the Motor Vehicles Act. Section 147 of the Motor Vehicles Act, 1988 sets out the requirements of the policies and the limits of the liabilities. The proviso to Section 147(1)(b) sets out the requirements of the policies and the limits of the liabilities. The proviso to Section 147(I)(b) sets out some of the liabilities that the insured may incur, but which would still not mandatorily required to be covered by the policy for the purpose of compliance with Section 147. The exclusion extends to the death or bodily injury to the employees of the owner except the person driving the vehicle in case of a public service vehicle, its conductor all the ticket examiner and in case of goods carriage, the employees being carried in the vehicle.

6. A Drilling Rig mounted on a vehicle does not mean a road transport vehicle as per the provisions of the Act. The said legal position was also considered by this Court. The Deputy Commissioner of Labour relied on teh judgment of the Madras High Court in the case of Commissioner of Income Tax

Vs. Popular Bore Well Services (Vol.194 ITR) and further relied on the judgment of the Hon'ble Division Bench of the High Court of Madras in the case of National Insurance Company Ltd., Salem Vs. Iyadurai and another, reported in (2003) II L.W.601 and the relevant paragraphs are extracted hereunder:

> "When a Policy obtained by an insurer which limits the coverage to that which the provisions of the Motor Vehicles Act require to be covered, one has to look to that Act to ascertain the extent of liability of the insurer. If some thing is not mandatorily required to be covered then the policy cannot be read as covering such a liability. Of course, it is always open to the insured to obtain additional coverage by paying the additional premium therefore and obtaining an appropriate policy.
>
> The exclusion clause in the Policy, which specifically provides that in case of drilling rigs the liability incurred by the insurer arising out of its operation as a tool or by the use of the plant forming part of the vehicle or attached to the vehicle cannot be ignored."

7. The Judgment of the Apex Court in the case of Oriental Insurance Company Ltd., Vs. Sony Cheriyan, reported in (AIR 199 SC 3252) is also quoted by the Deputy Commissioner of Labour, which reads as under:

> "The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."

8. Relying on the provisions of the Motor Vehicles Act and based on the principles laid down by the Courts as stated above, the Deputy Commissioner of Labour arrived a conclusion that because of the exclusion clause in IMT Endorsement No.52, the Insurance company is not liable to compensate the appellant who happens to be a driller employed in the rig unit of the vehicle. Accordingly, the burden was shifted on the shoulders of the 1st respondent, who is the owner of the rig unit as well as the employer in the present case.

9. This Court is of the considered opinion that when the Deputy Commissioner of Labour has relied on the provisions of the Motor Vehicles Act and the principles settled by the High Court as well as the Hon’ble Supreme Court of India, there is

no reason whatsoever to interfere with the award passed in this case. The Deputy Commissioner of Labour has rightly fixed the liability on the employer namely the 1st respondent in the present appeal, this Court do not find any infirmity or perversity as such.

10. Accordingly, the award dated 31.08.2007 passed in W.C.No.404 of 2005 stands confirmed and consequently, the Civil Miscellaneous Appeal in C.M.A.No.1771 of 2009 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour,
   Salem.

UM(CO)
SM/22/02/2021