

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.02.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1439 of 2016

1.Kurtala Dhal

2.Niranjan Dhal

.. Appellants

vs.

1.M/s.P.R.Engineers and Contractors,
D.No.365-A, Trinity Church Street,
Golden George Nagar, Nerkundram,
Chennai-600 107.

2.United India Insurance Co.Ltd.,
7th Floor, Tarapore Towers,
Anna Salai, Chennai-02.
For Service at
Silingi Building,
No.134 & 136, Greams Road,
Thousand Lights, Chennai-06.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923 against the Order dated 15.04.2016 passed by the Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-I), Chennai in W.C.No.49 of 2014.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : R1-Left (Not Ready in Notice)

Mr.A.Dhiraviyanathan for R2

O R D E R

The award dated 15.04.2016 passed in W.C.No.49 of 2014 is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised by the appellant reads as under:

1) Whether the learned Commissioner was justified in saddling liability of the 2nd respondent at Rs.10,612/- only when there was a valid policy of insurance covering the deceased employee?

2) whether the award of learned Commissioner determining the liability of the second respondent at Rs.10,612/- without any evidence brought on record by the 2nd respondent is sustainable?

3)Has not the learned Commissioner committed error in

not granting interest of 12% on award amount in terms of Sec.4-A(3) (a) of Employees Compensation Act-1923?

3. The claimants are the appellants and the application was filed seeking compensation on the ground that on 05.12.2013, when the deceased/Tharany @ Tarisen was working as Carpenter at Lancar Kairambedu, Nellikuppam Road, Guduvancherry, Kancheepuram District, during the course of employment, he fell down from the third floor and sustained multiple and grievous head injuries. He was taken to the S.R.M.Hospital, Kattankulathur and admitted and treated as in-patient from 05.12.2013 till 11.12.2013. Thereafter, he died on 11.12.2013 at about 12.30 hours. The legal heirs of the deceased filed an application seeking compensation. The claim petition was contested by the United India Insurance Company/ the second respondent.

4. The Deputy Commissioner of Labour adjudicated the issues and arrived a conclusion that the second respondent Insurance Company is liable to pay compensation strictly with reference to the terms and conditions agreed in the policy. According to the policy, a sum of Rs.9000/- is fixed as salary for eight labourers, annually. Thus, the employer/first respondent paid the premium. The monthly salary fixed per labour is Rs.93.75/- per month. Thus, the total salary payable to eight employees annually was calculated as Rs.9000/- and for the said sum of Rs.9000/-, the premium was paid by the employer to the Insurance Company. Taking note of the quantum agreed by the Insurance Company, the Deputy Commissioner of Labour fixed the liability and accordingly awarded compensation. The balance amount of compensation is directed to be paid by the employer/first respondent.

5. The appellants filed the present appeal on the ground that they will not be in a position to recover the compensation from the employer as they are in a disadvantageous position. As the victims, they are not in a position to fight against the employer and collect the portion of the award amount as awarded by the Deputy Commissioner of Labour. It is further contended that the liability is to be fixed on the Insurance Company in the entirety as the policy is the workmen compensation policy and therefore, the Insurance Company is liable to pay the entire compensation and if at all any dispute between the employer and the Insurance Company exist, the same is to be resolved between them and if necessary, the Insurance Company may recover the amount from the employer. Contrarily, the benefits conferred under the welfare legislation cannot be taken away by shifting the responsibility to the employer and in the event of fixing the liability on the employer, the appellants are not in a position to recover the award amount.

6. With reference to the question of law mainly raised, the learned counsel for the appellants contended that the policy itself is named as workmen's compensation (general policy) and there is no dispute that the coverage was in force during the relevant point of time when the accident occurred. The factum regarding the accident was also established. The Deputy Commissioner of Labour awarded compensation. However, fixing the liability on the employer side is improper on the part of the Deputy Commissioner of Labour, in view of the fact that the Insurance Company had undertaken to indemnify the compensation on behalf of the employer and now, they are estopped from shifting the responsibility with reference to the policy.

7. It is contended that the act contemplates that rightful compensation is to be paid to the workmen. Undoubtedly, the employer is primarily liable to pay compensation. Once the Insurance Company has undertook to indemnify the employer, then it is the liability of the Insurance Company to settle the compensation on behalf of the employer in entirety. The workmen is no way connected with the premium paid or the sum assured by the Insurance Company to the employer. The workmen is not a party to the contract between the employer and the Insurance Company. Thus, the rights of the workmen ought to be protected in all respects with reference to the provisions of the Workmen Compensation Act.

8. The learned counsel appearing on behalf of the second respondent/Insurance Company strenuously opposed the contention by stating that the insurance policy is not statutory in character. It is a contractual obligation between the employer and the Insurance Company and under the contractual obligation, the Insurance Company is liable to pay to the extent assured and certainly not more than that. Therefore, the liability of the Insurance Company is to be restricted with reference to the terms and conditions of the policy and not with reference to the quantum to be awarded and for which, the workmen is legally entitled under the Workmen Compensation Act. Secondly, it is contended that the liability is based on the policy as the Insurance Company undertook to indemnify the liability and therefore, it is a contractual obligation and cannot be considered as statutory liability.

9. The learned counsel for the second respondent distinguished by stating that the statutory liability may be a mandatory one. However, the contractual liability is to be fixed strictly in consonance with the terms and conditions agreed upon by the parties and not beyond that. The learned counsel for the second respondent further contended that the primary liability is on the employer under the provisions of the Workmen Compensation Act. Therefore, the Deputy Commissioner of Labour is correct in

sharing the liability with reference to the policy on one hand and with reference to the Act on the other hand. Thus, there is no infirmity and the appeal is to be dismissed. Further contention is raised that the employer has not contested the case. Therefore, the employer instigated the workmen to file the appeal in order to get the entire compensation from the Insurance Company and such a practice cannot be accepted.

10. The learned counsel for the second respondent solicited the attention of this Court with reference to the policy issued by the Insurance Company. Then the employer himself declared certain facts and when such facts are accepted and the policy is issued, then the liability of the Insurance Company cannot be held, over and above the agreed liability and even if the employer committed a mistake in declaring the correct salary of the workmen, then the employer must be responsible to that extent. Therefore, the Deputy Commissioner of Labour has correctly fixed the liability and no interference is required. Further, the policy was issued based on the proposals submitted by the employer concerned. Accepting the proposal, the policy was issued. In the policy, the number of workmen as well as the salary paid are also stated. Thus, relying on the said statement, the premium is accepted and policy was issued. Therefore, there is no liability on the part of the Insurance Company over and above the agreed liability under the terms and conditions of the policy.

11. This Court is bound to consider an important issue with reference to the fixing of liability on the Insurance Company. Undoubtedly, the policy is not a statutory policy entered into between the parties under any specific provision. However, the nature of the policy issued by the Insurance Company is to be considered with a right perspective and in consonance with the principles, more specifically, in the matter of award of compensation to the workmen. Thus, a pragmatic approach is required and the purpose and object of the welfare legislation ought to be protected. Undoubtedly, the Insurance Company is aware of the fact that the policy is issued for the welfare of the workmen who are all working under the particular employer.

12. Further, the Insurance Company is aware that the Workmen Compensation Act is the governing statute in the field of fixing liability. The Insurance Company is well aware of the fact that the employer is primarily liable to pay compensation and they are undertaking to indemnify the employer in the matter of payment of compensation by collecting the premium and by issuing policy. Therefore, it is a commercial contract between the employer as well as the Insurance Company, which is not directly connected with the workmen. However, the benefits are connected with the workmen. Therefore, the relationship between the

employer, Insurance Company and the workmen are inseparable. For the purpose of contract, the workmen is not connected. However, for grant of compensation, the workmen is connected. Thus, the workmen is the beneficiary from and out of the contract between the employer and the Insurance Company and such benefits are to be granted under the provisions of the Workmen Compensation Act and therefore, the policy is to be considered as if it is not limited to the contractual obligation but attached with the provisions of the Workmen Compensation Act.

13. Under these circumstances, straight jacket formula cannot be adopted by simply stating that the Insurance Company is no way connected with the workmen. The Insurance Company is within its knowledge that the compensation to be paid is for the benefit of the workmen. Thus, unlike other policies, wherein, the policy holder directly gets the benefits, here is the policy where the beneficiary is the workmen and the rights of the workmen are enunciated under the Workmen Compensation Act and therefore, the Insurance Company cannot shift its responsibility or state that they are no way connected with the Workmen Compensation Act or it is not a statutory contract.

14. There is an implied implication to Workmen Compensation Act with reference to the policy issued under the Workmen Compensation policy. Such an implied implication or liability to be interpreted so as to ensure that the rights of the workmen are protected as the Workmen Compensation Act is a welfare legislation. While protecting the rights of the workmen, the liability of the Company and the employer is also to be decided. Undoubtedly, collecting the compensation from the Insurance Company may be an easy way, but, the Courts have to consider various other aspects and in the event of sustaining any monetary loss on the part of the Insurance Company, then the Courts are bound to grant liberty to the Insurance Company to sue the employer and to recover the loss if any caused to the Insurance Company. Contrarily, the Courts cannot deny the welfare benefits to the workmen as contemplated under the Workmen Compensation Act. The Workmen cannot be made to suffer or cannot be driven out from pillar to post. The workmen is not a party to the contract. Therefore, there is no reason to penalise him or deny compensation, which is otherwise assured under the provisions of the Act.

15. Already such litigations are being prolonged at the instance of the employer or at the instance of the Insurance Company and payment of compensation is paid belatedly. Therefore, it is to be clarified that the liability is questioned by the Insurance Company or by the employer. The Courts must ensure that the compensation which is just, is to be disbursed as expeditiously as possible in order to save the

victim and thereafter, possible relief can be granted to the Insurance Company to sue the employer or to recover the money or to recover the premium or otherwise by following the procedures contemplated in law.

16. The very nature of the policy shows that it is a workmen compensation (general policy). With reference to the premium paid by the employer, the Insurance Company in the present case, accepted a sum of Rs.9000/- per annum which cannot be the salary for eight workmen in a construction company. The Insurance Company being a public authority, is expected to follow the general laws prevailing in our great nation. The Minimum Wages Act or the Central Government notifications issued under the provisions of the Workmen Compensation Act are to be followed, while entering into a policy with any employer. It is a statutory obligation on the part of the authorities to ensure that the insurance policies are issued in accordance with the general principles, which are all established or in accordance with the general laws, which are all in force.

17. The Insurance Companies, whether private or public are governed under laws. They are expected to protect the interest of the public at large and when the policy is entered into between the Insurance Company and another person, then the principles laid down under the applicable statutes must be adhered to and in violation, the Insurance Company is responsible and if any loss occurred at the instance of any of the officials, such losses are to be recovered from those officials, who have committed such irregularity, by following the procedures. Contrarily, the right of the workmen to get rightful compensation cannot be denied.

18. The statement of objects and reasons for enacting the workmen's compensation Act reveals that "the growing complexity of industry in this Country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accidents."

19. Therefore, the statement of objects and reasons must be read in consonance with the constitutional principles of social justice. Equality in the economical status is also a constitutional perspective under the directive principles of the State policy. The State and the Union are expected to strive hard to achieve the constitutional goal of social justice and to provide an equal opportunity as well as to minimize the inequalities in economical status.

20. Under these circumstances, if an employer is allowed to collude with the Insurance Company which is also a public institution and deprive the right of the workmen for compensation under the Workmen Compensation Act, then, such a collusion or irregularity in the matter of agreeing for an insurance policy, certainly amounts to violation of the principles of social justice enunciated in the preamble under the Constitution of India. Minimizing of economical status amongst the citizens of our great nation is also a constitutional perspective and in the event of allowing such collusion between the Insurance Company as well as the employer in the matter of agreeing for an insurance policy so as to indemnify the employer to a limited extent as per choice regarding payment of compensation under the Workmen Compensation Act, this Court is of the considered view that the actions are to be construed as unconstitutional and such insurance policies, which are all not meeting out the requirements of the constitutional principles as well as the welfare legislation viz., the Workmen Compensation Act, then such policies are to be construed as not in consonance with the philosophy and ethos of the Constitution. It is not as if the Insurance Company and the employer can shake their hands and deprive the right of the workmen from getting "just compensation" based on the insurance policy.

21. Undoubtedly, the Insurance Company may raise a point that they are liable to the extent of the policy and the balance compensation is to be paid by the employer. The Courts are bound to consider whether it is practically possible for the workmen to collect the portion of the compensation from his own employer. We are in an employer dominated society and therefore, the welfare legislation alone will protect the interest of the workmen in the matter of payment of compensation in the event of any accident. Thus, any such terms and conditions in the insurance policy, if agreed between the employer and the Insurance Company which is not fulfilling the requirements of the Workmen Compensation Act, are to be held as invalid, in view of the fact that such an agreement is depriving the workmen from getting 'just compensation' under the provisions of the Act.

22. In the present case, the policy reveals that the first respondent employer paid the premium for a sum of Rs.9000/- which is fixed as an annual salary for eight employees. The officials of the Insurance Company are very much aware that it is not an acceptable salary and its not a minimum wages as per the statute. Under the Employees Compensation Act, the Central Government periodically issuing notifications fixing the minimum wages, so also the respective State Governments are passing orders fixing minimum wages under the provisions of the Minimum

Wages Act. Therefore, those minimum wages must be the benchmark for the purpose of calculating the premium and the premium cannot be calculated at the whims and fancies of the Insurance Company and after accepting the premium and entering into a policy, they cannot shift their liability by stating that they are bound only by the terms and conditions of the contract. In such cases, where the right of the workmen is ensured under the statute, as stated earlier, the grant of compensation is not restricted with the contract between the employer and the Insurance Company. The workmen is the beneficiary. Therefore, the interest of the workmen is to be taken into account both by the employer as well as the Insurance Company. The Insurance Companies are obligated to ensure that the employer is also following the rules and regulations correctly.

23. Thus, if any insurance policy is issued, the Insurance Company as a public authority must issue, if the premium is paid for the minimum wages notified under the provisions of the Workmen Compensation Act. If the Insurance Company decided to collect any amount premium at the choice of the employer and accept the liability, then it causes infringement of the right of the workmen, which is otherwise assured under the provisions of the Workmen Compensation Act. Therefore, the Insurance Company is also obligated to collect the premium in consonance with the minimum wages so as to ensure that the rightful compensation is paid by the Insurance Company in the event of any accident or otherwise.

24. The IRDAI (Insurance Regulatory and Development Authority of India) must ensure that once the product is issued to cover any liability under any of the statute, then, the Insurance Companies are bound to follow the provisions of the said Act and ensure that the beneficiaries realize the benefits in accordance with the provisions of the Act. Thus, suitable orders or instructions or circulars are to be issued so as to ensure that the Insurance Companies follow the requirements of the statute, more specifically, in the present nature of cases, the minimum wages, which is notified by the Central Government periodically under the provisions of the Workmen Compensation Act. In the event of collecting impracticable and lesser premium and thereafter denying liability would cause infringement of the rights of the workmen and the payment of compensation is delayed on account of these disputes. Therefore, such unnecessary disputes are to be avoided by following the provisions of the statute in its letter and spirit and in the event of any violations on the part of the Insurance Company or its officials, who are responsible, must be prosecuted and in the event of any monetary loss, the same is to be recovered from those officials or from the Insurance Company concerned by following the procedures contemplated.

25. With reference to the filing of the appeal by the workmen, this Court is of the considered opinion that the employer shifted his liability. The case on hand is a classic case where the employer has not taken care regarding the rights of the workmen. The Insurance Company is also attempting to restrict its liability. Ultimately, the very purpose and object of the Workmen Compensation Act is defeated. Therefore, this Court is of the opinion that in the event of employer or the Insurance Company shifting its responsibility, the Courts are expected to act swiftly and pay "just compensation" immediately and liberty may be granted to the Insurance Company concerned to initiate action against the employer for recovery in accordance with law.

26. In view of the discussions made in the aforementioned paragraphs, this Court is inclined to fix the liability on the Insurance Company. However, the second respondent Insurance Company is at liberty to file appropriate application before the Workmen Compensation Commissioner under Section 31 of the Act to recover the portion of the award to be paid by the employer to the workmen. Thus, the Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident to the workmen within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS. The Insurance Company is at liberty to recover the portion of the liability fixed on the employer by filing an appropriate application under Section 31 of the Workmen Compensation Act.

27. In this view of the matter, the award dated 15.04.2016 passed in W.C.No.49 of 2014 is modified. C.M.A.No.1439 of 2016 stands allowed in part. No costs.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To

The Commissioner for Workmen's Compensation-I
(Deputy Commissioner of Labour-I), Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.No.11722

+1cc to Mr.A.Dhiraviyanathan, Advocate Sr.No.11940

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C.M.A.No.1439 of 2016