

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3414 of 2013

M.P.No.1 of 2013

M/s.New India Assurance Company Limited,
39C, Bye-Pass Road,
Dharmapuri-626 701.

... Appellant

vs.

1.P.Chinnarasu

2.A.Kulandivelu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30(1) of Workmen's Compensation Act against the order dated 12.08.2012 passed in W.C.No.198 of 2006 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour), Salem.

For Appellants : Mr.K.Vinod

For Respondent : Mr.R.Md.Nasruallah

for Mr.K.V.Shanmuganathan for R1

No-appearance for R2

O R D E R

The award dated 12.08.2012 passed in W.C.No.198 of 2006 is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial question of law mainly raised by the appellant/Insurance Company is that when the insurer of the Tractor Trailer intended for agricultural purpose, the Insurance Company is not liable for claim, as far as the helper of Maize Harvester Machine is concerned. As per the policy, there is a

coverage only for the driver of the Tractor and therefore, fixing the liability on the Insurance Company is in violation of the provision of the Statute.

3. The first respondent/workman filed an application under the Workmen's Compensation Act seeking compensation mainly on the ground that on 01.10.2006, he was working as a helper in Maize Harvester Machine, attached with the Tractor. At that time, he sustained injuries and took treatment and thereafter, filed an application seeking compensation. The Deputy Commissioner of Labour adjudicated the issues. As far as the issue regarding the liability is concerned, the Deputy Commissioner of Labour considered the fact that the policy was in-force. In addition, premium was paid in the Trailer also. Taking note of the fact that the premium was paid for Trailer attached with the Tractor, the Deputy Commissioner of Labour fixed the liability on the Insurance Company.

4. The learned counsel appearing on behalf of the appellant contended that the Trailer cannot compare with Maize Harvester Machine. Maize Harvester Machine is attached to the Tractor. As per the policy, the driver alone is entitled for compensation from the Insurance Company, in view of the fact that the policy itself indicates that "WC to driver". When there is no coverage for the helper who is working in a Maize Harvester Machine, the Insurance Company cannot be held liable to pay compensation. In the present case, admittedly, the injured was working as a helper in the Maize Harvester Machine attached with the Tractor. Admittedly, he was not a driver of the tractor. Therefore, there was no coverage in the policy and the fact in this regard has not been considered by the Deputy Commissioner of Labour. Mere payment of premium for Trailer would not cover a workman so as to pay compensation under the Workmen Compensation Act. Admittedly, the injured was a workman and not a third party. Undoubtedly, a third party is made available regarding the premium paid for Trailer. However, the helper working in a tractor is not covered and more specifically, in the present case, the injured was working in a Maize Harvester Machine which was not insured and there was no coverage.

5. This being the factum established, the Deputy Commissioner of Labour has committed an error in fixing the liability on the appellant/Insurance Company instead of fixing the liability on the owner of the vehicle/second respondent. Accordingly, the second respondent/Mr.A.Kulandaivelu, the owner of the Maize Harvester Machine is liable to pay compensation as awarded by the Deputy Commissioner of Labour and the first

respondent/workman is entitled to recover the compensation from the second respondent/owner of the Machine. As far as the appellant/Insurance Company is concerned, there is no policy coverage for the helper working in a Maize Harvester Machine. Therefore, they cannot be held liable. Accordingly, the award 12.08.2012 passed in W.C.No.198 of 2006 is set aside, as far as the appellant/Insurance Company is concerned and the Civil Miscellaneous Appeal stands allowed. The appellant is permitted to withdraw the deposited amount with accrued interest by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb
To

1.Commissioner of Workmen's Compensation
(Deputy Commissioner of Labour),
Salem.

2.The Section Officer,
VR Section, High Court, Chennai.

1cc to Mr.K.Vinod, Advocate Sr.11676

C.M.A.No.3414 of 2013

ad[col
srg 17/03/2021

सत्यमेव जयते

WEB COPY