IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-10-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.18728 of 2016
And
WMP No.16358 of 2016

1.Mrs.K.Kalavathi

2.K.Morrish Kumar (aged 16 yrs.)

3.K.Prajeeth (aged 9 yrs.)
(petitioners 2 and 3 are represented by
their Mother and Natural Guardian Mrs.K.Kalavathi)

4.K.Madhanagopal

5.M.Saroja .. Petitioners

vs.

1.Union of India,
Represented by Secretary to Government,
Ministry of Finance,
Department of Financial Services (Insurance Division),
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.K.Vasudevan,
Proprietor,
M/s.Balaji Container Terminal,
No.144, Mannarasamy Koil Street,
Royapuram,
Chennai – 600 013.

3.M/s.IFFCO-TOKO GENERAL INSURANCE CO. LTD.,
ITG1 – Chennai Commercial,
IFCO Bhawan,
No.128, Habibullah Road,
T.Nagar,
Chennai – 600 017.

4.M/s.Sathuva Hitech Private Ltd.,
Sathuva CSF Company,

No.126-A, Ponneri High Road,
Chennai – 600 103.

5.The Managing Partner,
A.S. Doraisamy and Son,
No.247, Thambu Chetty Street,
II Floor,
Chennai – 600 001. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to pay a sum of Rs.20 lakhs with interest to the petitioners towards compensation for the death of M.Kamalakannan in the accident caused by the container handling crane owned by the second respondent insured with the third respondent in the course of his employment in the container terminal premises of the second respondent.

For Petitioners : Mr.M.Elumalai for
Mr.S.Ayyathurai

For Respondent-1 : Dr.D.Simon,
Central Government Standing Counsel.

For Respondents-2 and 4 : Mr.R.Amizhdhu

For Respondent-3 : Mr.S.Arunkumar

O R D E R

The relief sought for in the present writ petition is to direct the first respondent to pay a sum of Rs.20 lakhs with interest to the petitioners towards compensation for the death of Mr.M.Kamalakannan in the accident caused by the container handling crane owned by the second respondent insured with the third respondent in the course of his employment in the container terminal premises of the second respondent.

2. The petitioners are the legal heirs of late Mr.M.Kamalakannan, who was working as a Clearing Assistant under the fourth respondent-Private Company. The employment of the husband of the first petitioner-wife was made through the fifth respondent. On 23.07.2014, the said Mr.M.Kamalakannan went to attend the duty. He sustained serious injuries in an accident occurred due to rash handling and driving of Crane and died on 23.07.2014. The accident was caused due to rash and negligent handling and driving of the vehicle/Crane owned by the second respondent in the Container Terminal Premises.

3. It is stated that the deceased was drawing a salary of Rs.20,000/- per month from his employment.

4. When the writ petition was taken up for final hearing, this Court raised an objection in view of the fact that the deceased was employed by the fourth respondent through the fifth respondent. The Crane, which caused the death of the labour, belonged to the second respondent. The accident occurred in the Container Terminal Premises. Thus, the petitioners ought to have approached the Competent Authority under the Workmen Compensation Act or to file an accident claim before the appropriate Forum. Contrarily, the petitioners were advised to file the present writ petition.

5. The first petitioner is the wife of the deceased, who is an illiterate. The petitioners 2 and 3 were minors during the relevant point of time. The petitioners 4 and 5 were the parents of the deceased aged more than 70 years. Under these circumstances, the petitioners were not aware of the illegal implications regarding the entertainability of the writ proceedings under Article 226 of the Constitution of India.

6. The writ petition is pending for about five years. When it is taken up for final hearing, this Court formed an opinion that driving these poor petitioners to the Competent Authorities under the Workmen Compensation Act, at this length of time would cause greater hardship and further the issue will be prolonged and protracted the right of the parties in the near future cannot be crystallised.

7. It is unfortunate that during the pendency of this writ petition, the first petitioner (wife of the labour-deceased husband) was also died and further the fourth petitioner (father of the deceased) was also died. Thus, the two young male children were left in lurch.

8. The learned counsel for the petitioners has stated that one another son K.Prajeeth is mentally unsound and studying in a Special School. Under these circumstances, this Court is inclined to take up the writ petition for the purpose of determining the rights of the parties.

9. In such circumstances, the High Court is empowered to entertain the writ proceedings under Article 226 of the Constitution of India and the power conferred is also emphasised by the Hon'ble Supreme Court of India in the case of Maharashtra Chess Association vs. Union of India and others [(2020) 13 SCC 285], wherein in paragraphs 11 and 13, it has been held as under:-

> “11. Article 226(1) of the Constitution confers on High Courts the

power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. [“226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”] The text of Article 226(1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or “for any other purpose”. A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

> “The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours […] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law.…” [James Bagg's case, (1572) 11 Co Rep 93b : 77 ER 1271].”

“13. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In A.V.Venkateswaran v. Ramchand Sobhraj Wadhwani [A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 753 : AIR 1961 SC 1506] a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it: (AIR p. 1510, para 10)

> "10. … We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law."

10. The learned counsel for the petitioners state that there was an Insurance Policy in force during the relevant point of time, when the accident occurred. As per the Insurance Policy, dated 01.07.2014, the third party liability is covered. The deceased employee was not an employee of the insured person and in fact, he was employed by the fourth respondent through the fifth respondent. Thus, the deceased was no way connected with the insured or the Department of Financial Services or the owner of the Crane/second respondent. Thus for all purposes, the deceased person is a third party and therefore, as per the Insurance Policy, the third respondent is liable to pay compensation to the petitioners.

11. The copy of the Insurance Policy was furnished before this Court and the relevant portion of the said policy stands

extracted as under:-

> "P.009: Third Party Liability -
>
> In consideration of the payment of the additional premium, it is hereby agreed and declared that notwithstanding anything to the contrary stated in this policy, the Company will indemnify the insured:
>
> (a) Against legal liability for the accidental loss or damage caused to the property of other persons.
>
> (b) Against legal liability (liability under contract excepted) for fatal or non-fatal injury to any persons other than the insured or his own employees or employee of the owner of the works/site/premises/location or employees of the other firms/connected with any other work site/premises/ location or members of the family of the insured or any of the aforesaid."

12. The learned counsel appearing on behalf of the third respondent-Insurance Company raised an objection by stating that the deceased was an employee working in the site and therefore, there was no policy coverage as far as the employee is concerned. The third party liability is only in respect of a third party, who is no way connected with the job in that particular locality and therefore, the third respondent is not liable to pay compensation to the petitioners.

13. The learned counsel for the fourth respondent objected the contentions raised by the Insurance Company by stating that as far as the deceased person Mr.M.Kamalakannan is concerned, he was a third party as he was not an employee of the insured person nor an employee of the Department of Financial Services and moreover, the deceased was not employed by the second respondent-Proprietor of the Crane. Therefore, he was a third party to the contract i.e., the Insurance Policy. When the person deceased is a third party to the contract, then the insurance coverage is available under the clause, as stated above.

14. It is needless to state that the third party liability means the third party to the contract.

15. In the present case, admittedly, the deceased person Mr.M.Kamalakannan is not a party to the insurance, as he was not employed by the insured person. Thus, for all purposes, the deceased person is to be treated as a third party for the purpose of claiming compensation.

16. The third party liability clause as per the policy also clarifies that against legal liability (liability under contract excepted) for fatal or non-fatal injury to any persons other than the insured or his own employees or employee of the owner of the works.

17. It is an admitted fact that the deceased Mr.M.Kamalakannan was not an employee of the insured person and therefore, he was not a party to the contract and was a third person as far as the liability clause is concerned. Accordingly, the petitioners are entitled for compensation as per the Insurance Policy dated 01.07.2014, more specifically under the third party liability clause.

18. The learned counsel for the petitioners submitted a memo of calculation for compensation payable to the petitioners as per The Workmen Compensation Act, which reads as under:-

Sl.No.	Particulars	Amount (Rs.)
1.	Last drawn salary of Deceased Kamalakannan compensation to be paid	7,000.00
2.	In the case of Death; 50% of the wages multiplied by relevant factor : 169.44 i.e., Rs.3,500 x 169	5,93,040.00
3.	Interest @ 12% per annum for 7 years from the date of accident i.e., dated 23.07.2014	491193
	TOTAL [S.No.(2) + S.No.(3)]	10,84,233.00

19. The learned counsel for the third respondent made a submission that the policy coverage is limited to the extent of a sum of Rs.10 lakhs in respect of third party claim. When there is a ceiling of Rs.10 lakhs towards compensation for the third party liability, the petitioners are entitled for the said compensation amount of Rs.10 lakhs under the Insurance Policy.

20. Accordingly, the third respondent-Insurance Company is directed to pay a sum of Rs.10 lakhs towards compensation in favour of the petitioners along with interest at the rate of 7.5% per annum from the date of filing of the writ petition till the date of realisation.

21. The total compensation amount of Rs.10 lakhs is to be apportioned as under:-

(1) The second petitioner Mr.K.Morrish Kumar is entitled for a sum of Rs.4 lakhs along with the proportionate rate of interest.

(2) The second petitioner K.Prajeeth is also entitled for

Rs.4 lakhs along with the proportionate rate of interest and the fifth petitioner viz., M.Saroja, mother of the deceased, is entitled for a sum of Rs.2 lakhs along with the proportionate rate of interest.

(3) As far as the third petitioner viz., K.Prajeeth is concerned, he is not mentally sound and therefore his portion of compensation is to be deposited in Fixed Deposit in any one of the Nationalised Bank and the second petitioner Mr.K.Morrish Kumar, brother of the third petitioner, is entitled to receive the interest portion alone once in three months for the purpose of maintaining the third petitioner Mr.K.Prajeeth.

(4) The Fixed Deposit made is to be periodically renewed to meet out the expenditures of the third petitioner. The other two major petitioners are concerned, the third respondent is directed to settle their respective portion of compensation directly by way of a cheque or Demand Draft, as the case may be.

(5) The third respondent is directed to settle the entire compensation amount, within a period of six weeks from the date of receipt of a copy of this order.

22. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

Svn

To

The Secretary to Government,
Union of India,
Ministry of Finance,
Department of Financial Services (Insurance Division),
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

+1CC to M/s.S.Ayyathurai, Advocate, SR.No. 52603
+1CC to Dr.D.Simon(CGSC), Advocate, SR.No. 52516
+1CC to M/s.S.Arunkumar, Advocate, SR.No. 52373

WP 18728 of 2016

KJ(CO)
B.VC (27/10/2021)