

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1718 of 2018
and C.M.P.No.13316 of 2018

The Oriental Insurance Co.Ltd.,
Oriental House, First Floor,
No.216/115, Prakasam Salai,
Broadway, Chennai - 108.

.. Appellant/2nd Respondent

Vs.

1. Suri @ Suryakumar ...1st Respondent/Petitioner

2. Sri Amman Agency,
No.17/18, Manali New Town,
Chennai - 103 .. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923 against the order dated 12.03.2018, made in E.C.Case No.556 of 2013 on the file of the Court of Commissioner for Workmen's Compensation (Joint Commissioner of Labour -2), Chennai - 600 006.

For Appellant	:	Mr.K.Vinod
For Respondent 1	:	Mr.T.Ananthasekar
For Respondent 2	:	No appearance

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed challenging the order dated 12.03.2018, passed by the Joint Commissioner of Labour - I, Teynampet, Chennai - 600 006, (hereinafter referred to as the 'Commissioner') in E.C.No.556 of 2013.

2. The appellant / Insurance Company has challenged the impugned order on the following Substantial Questions of Law:

"1. Whether the appellant insurer has statutory liability to pay interest under Employees Compensation Act, 1923 ?

2. Is the appellant insurer liable to pay interest on award amount, either as per Statute or as per the terms and conditions of the insurance policy Ex.R-1 ?

3. Is the appellant entitled to contract against the Statute in regard to payment of interest on award amount ?

3. The learned counsel for the appellant drew the attention of this Court to the insurance policy, which is marked as Ex.R1 before the Commissioner and would submit that the Commissioner has erroneously fixed the monthly income of the first respondent/petitioner at Rs.8,000/- based on the Schedule in the Workmen Compensation Act. According to him, under the insurance policy (Ex.R1), the appellant insurance company is liable to pay compensation based on the monthly income of the first respondent/petitioner at only Rs.3,000/-. The learned counsel would further submit that under the Workmen Compensation Act, there is no statutory liability cast upon the insurance company to pay compensation and they are liable to pay compensation only in accordance with the contract namely the insurance policy (Ex.R1). In support of his submissions, the learned counsel for the appellant drew the attention of this Court to the following authorities viz.,

(a) P.J.Narayan Vs. Union of India reported 2004 ACJ 452; and

(b) Saberabibi Yakubbbhai Shaikh and others Vs. National Insurance Co. Ltd., and others reported in CDJ 2014 SC 013.

4. After referring to the aforementioned authorities, the learned counsel would submit that the Workmen Compensation Act cannot be equated with the Motor Vehicles Act, where in the said Statute, there is statutory liability cast upon the insurance company to pay the compensation, whereas, in the Workmen Compensation Act, the insurance company is liable to pay compensation only in accordance with the contract i.e., the insurance policy.

5. Further according to the learned counsel, in the impugned order passed by the Commissioner, the Commissioner has erroneously fixed the monthly income of the first

respondent/petitioner at Rs.8,000/-, which is not in accordance with the contract i.e. the insurance policy (Ex.R1) and the Commissioner ought to have fixed the monthly income of the first respondent/petitioner only at Rs.3,000/-. He would also further submit that the appellant insurance company is also not liable to pay interest as it is not incorporated in the contract i.e. insurance policy (Ex.R1). The learned counsel also drew the attention of this Court to the findings of the Commissioner in the impugned order and would submit that even though the appellant insurance company has taken the plea that they are liable to pay compensation only as per the contract i.e. insurance policy (Ex.R1), there is no discussion with regard to the said plea in the impugned order.

6. Per contra, the learned counsel appearing for the first respondent/petitioner would submit that Workmen Compensation Act, being a welfare legislation, the impugned order passed by the Commissioner is correct, as according to him, the appellant insurance company will have to pay the compensation amount as determined by the Commissioner and thereafter recover the same from the employer namely the second respondent herein. He would also submit that the accident victim namely the first respondent is now in a pathetic condition and therefore no prejudice will be caused to the appellant insurance company if the compensation amount, as determined by the Commissioner, is paid and thereafter recover it from the employer viz., the second respondent herein.

7. It is settled law that under the Motor Vehicles Act, there is a statutory liability on the part of the insurance company to pay compensation under Section 147 of the said Act. But under the Workmen Compensation Act, there is no such statutory liability cast upon the insurance company. The compensation under the Workmen Compensation Act is payable by the insurance company only in accordance with the contract entered into between the employer and the insurance company and in the instant case, the insurance policy (Ex.R1). Under the insurance policy (Ex.R1) the liability of the insurance company is mentioned in Sl.No.1, which reads as follows:

Sr.No	Name of the Contractor	Occupation	Labour (%)	Amount of Contract
1	Labourers - 20	Loading and Unloading	100	7,20,000

8. In the counter statement filed by the appellant insurance company before the Commissioner, they have taken a specific stand that they are liable to pay compensation only in accordance with the contract i.e., insurance policy (Ex.R1). As seen from the oral evidence of R.W.1, the official of the appellant insurance company, he has also raised a specific stand that the insurance company is liable to pay compensation only as per the contract of the conditions of the insurance policy (Ex.R1). Despite the pleading to that effect as well as evidence adduced to that effect, the Commissioner has not discussed that plea in the impugned order. This being the case, when a legal issue has been raised, the Commissioner ought to have considered the same on merits and in accordance with law. The judgements relied upon by the learned counsel appearing for the appellant referred to supra have also not been considered in the impugned order.

9. Though the learned counsel for the first respondent made submissions that Workmen Compensation Act being a welfare legislation, the appellant can very well pay the compensation amount as determined by the Commissioner and recover the same from the employer, he has to satisfy this Court by precedents as well as through the provisions under the Workmen Compensation Act, which enable the first respondent to receive the compensation on that basis.

10. After giving due consideration to the aforementioned factors and in view of the fact that the Commissioner has not considered the plea of the appellant as raised in this appeal, the matter will have to be remanded back to the Commissioner for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court.

11. For the foregoing reasons, the impugned order dated 12.03.2018, passed by the Court of the Commissioner for Workmen Compensation (Joint Commissioner of Labour-2), Chennai - 600 006 is hereby set aside and the matter is remanded back to the very same Commissioner, who shall permit both the parties to adduce further evidence, if they so desire, in addition to the already existing evidence which is available on record and thereafter pass orders on merits and in accordance with law and after due consideration of the contentions raised by the appellant in this appeal, within a period of four months from the date of receipt of a copy of this judgment. With the aforesaid directions, this civil miscellaneous appeal is disposed of. This Court make it clear that till the proceedings are finally disposed of by the

Commissioner, pursuant to the judgment of this Court, the first respondent/petitioner shall not withdraw any further sum lying to the credit of the Joint Commissioner of Labour, Teynampet, Chennai - 6, in E.C.No.556 of 2013. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Joint Commissioner of Labour-2,
Teynampet, Chennai - 600 006.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1CC to M/s.Elveera Ravubdrab, Advocate, Sr.No.45343
+1CC to Mr.P.Kothandaraman, Advocate, Sr.No.45661

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and C.M.P.No.13316 of 2018

PM (CO)
K.RK. (02.11.2021)