IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1763 of 2018
and
C.M.P.No.13631 of 2018

National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002. ...Appellant

Vs.

1.Tmt.S.Mathina
2.Minor S.Mohammed Ibrahim
3.Thiru C.Selvam ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the Award dated 30.11.2017 made in W.C.No.71 of 2014 on the file of the Commissioner for Workmen's Compensation - 1 cum Deputy Commissioner of Labour - 1 Tribunal, Chennai. I.

For Appellant : Mr.S.Vadivel

For Respondents : M/s.M.Malar

J U D G M E N T

The substantial question of law raised in the present Civil Miscellaneous Appeal is that:

> '1. whether the Deputy Commissioner of Labour is right in fixing liability on the Insurance Company in the absence of Insurance policy.
> 2. Whether the Deputy Commissioner of Labour as interpreted as Exs.R1 to R8 in the manner known to law.

2.The fact remains that the respondents 1 and 2 are claimants, filed an application under Section 10 of W.C.Act, on the ground that on 23.02.2014 at about 7.15 hours, when the deceased viz., Z.Safiullah was driving his car bearing Registration No. TN 09 BH 9133 proceeding to GST Road, met with an accident and sustained multiple head injuries and died on the spot. The application was filed stating that the husband of the first respondent was employed as a driver and the accident occurred during the course of employment. It is an admitted fact that the deceased was employed as a driver with the third respondent Mr.C.Selvam, who is the owner of the vehicle. The application was adjudicated by the Deputy Commissioner of Labour and the factum regarding the accident was established. The employment of the deceased with the third respondent Mr.C.Selvam, was also established. However, the Appellant Insurance Company raised a specific ground that the policy was canceled well before the date of the accident and therefore, the liability cannot be fixed on the Insurance Company, but it is to be fixed on the third respondent/owner of the vehicle.

3. In this regard, with reference to the policy, it is contended that on 09.03.2013, the owner of the vehicle issued the premium cheque bearing No.038293, drawn on Bank of Baroda for Rs.24,530/-. The cancellation of policy vide Policy No.500401/31/12/6300012665 was from 12.03.2013 to 11.03.2014. On 13.03.2013, the Bank returned the cheque with an endorsement "insufficient funds". On 15.03.2013, the appellant Insurance Company canceled the policy, in view of the fact that the cheque was dishonored. On 18.03.2013, intimation was given to the third respondent/owner of the vehicle and concerned RTO about the cancellation of the policy and the document was marked as Exs.R5 and R6 before the Deputy Commissioner of Labour. Admittedly, the accident occurred on 23.02.2014, after the cancellation of the Insurance Policy.

4. When the cancellation of the Insurance Policy was marked as Ex.R5 and the said cancellation was intimated to the RTO concerned as well as the owner of the vehicle, the Deputy Commissioner of Labour has committed an error on fixing the liability on the Appellant Insurance Company. In fact, the liability should be fixed on the third respondent/ owner of the vehicle, in view of the fact that the policy was canceled well before the date of the accident and the cheque issued was also dishonored and this vital aspect was not considered by the Deputy Commissioner of Labour.

5. On perusal of the documents marked by the Insurance Company reveals that the cancellation of Insurance Policy was marked as Exs.R5 & R6. Therefore, there is no reason to disbelieve the said document which was communicated to the RTO concerned as well as to the owner of the Vehicle. It is pertinent to note that the dishonor of the cheque was not disputed by the owner of the vehicle, who was a party to the WC proceedings. However, such being the factum, there is no reason to disbelieve the said document. The dishonoring of the cheque will result in cancellation of Insurance Policy, which is a

procedure followed by the Insurance Company. When the cheque issued by the owner was dishonored with an endorsement “insufficient funds”, then the Insurance Company in routine course would cancel the Insurance Policy. This being the factum, the Deputy Commissioner of Labour committed an error in fixing the liability on the Appellant Insurance Company.

6. Accordingly, this Court is of an opinion that the liability should be fixed on the third respondent/owner of the vehicle. Thus, the third respondent/owner of the vehicle Mr.C.Selvam, is liable to pay the award amount with accrued interest to the appellant. As far as the appellant Insurance Company is concerned, they are exonerated from the liability and therefore, the award amount already deposited by the Appellant Insurance Company is to be returned back to the appellant with accrued interest and the appellant Insurance Company is permitted to withdraw the same by filing an appropriate application and all the payments are made through the RTGS.

7. Accordingly, the Award dated 30.11.2017, passed in W.C.No.71 of 2014, is set aside and C.M.A.No.1763 of 2018 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Pns
To

1.The Commissioner for Workmen's Compensation - 1
cum Deputy Commissioner of Labour - 1 Tribunal,
Chennai. I.

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

+1cc to Mr.M.Malar, Advocate Sr.5043
+1cc to M/s.S.Vadivel, Advocate Sr.4862

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srg 10/03/2021