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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.04.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1088 of 2017
and
C.M.P.No.5378 of 2017

Management of Iyerpadi Estate,
Iyerpadi Post,
Valparai 642 108,
Coimbatore District.

.. Appellant

Vs.

1.M.Jayalakshmi

2.The National Insurance Company Ltd.,
Divisional Office-2,
State Bank of India Road,
Coimbatore-641 018.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, pleaded to set aside the order of the Commissioner for Employees Compensation and Deputy Commissioner of Labour, Coimbatore-18 in E.C.No.78 of 2014 dated 05.01.2017 in so far as granting interest @ 12% after 30 days from the date of accident.

For Appellant	: Mr.T.S.Gopalan and Co.
For Respondents	
For R1	: Mr.V.Suriyakumar
For R2	: No appearance

J U D G M E N T

The appellant herein is the 1st respondent in E.C.No.78 of 2014 filed by the claimants / 1st respondent herein, claiming compensation for the injuries sustained by her, while she was employed in the estate, belongs to the appellant on 14.12.2014. The appellant / 1st respondent is having insurance insured with the 2nd respondent, for the workers engaged by him.

2. After full trial, the Deputy Commissioner of Labour awarded compensation of Rs.54,425/- after 30 days from the date of accident and directed the 1st respondent alone to pay the interest. Aggrieved by the order the appellant / 1st respondent



has preferred this appeal.

3. The above Civil Miscellaneous Appeal was admitted on the following Substantial questions of law:

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"(i) Whether the Commissioner for Employees Compensation was justified in condoning the delay of 10 years in filing the claim especially in the absence of a valid and justifiable reason?

(ii) Whether the authority was justified in allowing the claim of the employee when there was no material to show that she had suffered an accident in course of her employment?

(iii) Whether the authority was justified in invoking Section 4A(3) (a) of Employees Compensation Act in the facts and circumstance of the case to grant interest to the 1st respondent? and

(iv) Whether the Authority was justified in fastening the liability of interest on the appellant in view of the Workmen Compensation Policy taken out with the 2nd respondent?"

4. The facts reveal that the 1st respondent / claimant worked under the appellant as a plantation worker in the tea estate. While, she was engaged in plucking of tea leaves on 14.12.2004, she slipped down in the estate and injured on her left hand and took treatment. Even, after her treatment, she was unable to do the work as she did before. Thereafter, she has filed the claim petition before the Labour Commissioner, Coimbatore. Based upon the documents, the Labour Commissioner concluded that the 2nd respondent / insurance company is liable to pay the award amount but for the interest on the award amount, he fixed responsibility on the appellant herein / 1st respondent. Therefore the appellant has filed this appeal.

5. As per the findings given by the Commissioner of Labour, the policy did not cover the liability of insurer with regard to interest or penalty imposed or otherwise interest is payable to the 1st respondent. As per the ratio laid down in the case of P.J.Narayan (Vs.) Unions of Indian and others reported in 2004 ACJ 452, it was held as follows:

"An Insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance Company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance company cannot be forced by Courts to take on liabilities which they do not want to take on."



6. The Labour Commissioner rightly appreciated the facts of the case and fixed liability on the appellant herein / 1st respondent, which require no interference by this Court. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order passed by the Commissioner for Employees Compensation and Deputy Commissioner of Labour, Coimbatore, in E.C.No.78 of 2014 dated 05.01.2017 is confirmed. Consequently connected Civil Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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TO

The Commissioner of Employees
Compensation/Deputy Commissioner of labour,
Coimbatore-18

Copy TO:

The Section Officer
VR Section, High Court,
Madras.

C.M.A.No.1088 of 2017
and
C.M.P.No.5378 of 2017

RP(CO)
SB(20/07/2021)