

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3005 of 2017
and
C.M.P.No.17902 of 2017

Divisional Manager,
M/s.New India Assurance
Company Limited,
Paramathy Road,
Namakkal.Appellant

Vs.

1.Thirumathi.Vasantha
2.Thiru.Annamalai
3.Thiru.Ganesan
4.Thiru.Murugan
5.Selvi.Meenakshi
6.Minor.Thangavel
7.Minor.Ranjitha
8.Selvi.Banu Priya
9.Thiru.N.M.Senthil KumarRespondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award dated 07th August, 2017, (received on 16.08.2017), passed by the Learned Commissioner for Employees Compensation (Deputy Commissioner of Labour), at Conoor, Nilgiris, in E.C.No.433 of 2015.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.K.A.Mariappan
[For R1 to R9]

J U D G M E N T

The Substantial Question of law raised in the present Civil Miscellaneous Appeal is that whether the Commissioner of Labour was justified in directing the Appellant to satisfy the Final Award passed in favour of the Respondents I to VIII, when the vehicle of the IX Respondent is not a 'Goods carriage' and no

statutory coverage in terms of Proviso (i) (c) to Section 147(1) of the Motor Vehicles Act, 1988, is envisaged in respect of employees, other than drivers carried therein; Whether the Award of the Learned Deputy Commissioner of Labour saddling liability on the Appellant can be sustained, when the same is devoid of any reasoning.

2. The learned counsel appearing on behalf of the appellant mainly contended that the appellant/Insurance company is not liable to pay compensation as there is no coverage and the vehicle, which involved in an accident is a rig union. The Deputy Commissioner of Labour has erroneously fixed the liability on the appellant Insurance company.

3. The fact remains that the respondents/claimants filed application, seeking compensation on the ground that the 9th respondent is the owner of the lorry bearing Registration No.TN-27-X-0013. On 18.02.2013 at about 11.30 p.m, the deceased was working in the rig unit as cleaner. When they were digging a bore well, the deceased cleaner Kuppusamy seen reverse and at that point of time, he met with an accident and died subsequently. The Claim Petition was filed. The Deputy Commissioner of Labour mainly arrived a conclusion for grant of compensation by holding that the policy was in existence and it is a commercial vehicle for the package policy and therefore, the claimants are entitled for compensation.

4. Undoubtedly, the policy was in force and in fact, the policy was taken for a rig unit. As far as the rig units are concerned, Section 147(i)(c) stipulates that when it is not a goods carriage, there is no statutory coverage under the said provision in respect of the employees other than the drivers carried in such units. Therefore, the driver alone is covered under the Insurance policy as far as the rig units are concerned. With reference to Section 147(1) proviso clause of the Motor Vehicles Act as stated supra, as far as the cleaners are concerned, there is no coverage and therefore, beyond the scope of the terms and conditions of the policy, the Deputy Commissioner of Labour is not empowered to grant compensation. The Appellant/Insurance company is liable to pay compensation strictly with reference to the terms and conditions of the policy. When there is no statutory liability, other than the drivers working in the rig unit under Section 147(1) proviso clause, the liability cannot be fixed as far as the other employees of the rig units are concerned.

5. In the present case, admittedly, the deceased was working as a cleaner and there is no coverage for such cleaners. Therefore, the Deputy Commissioner of Labour is bound to fix liability on the owner of the vehicle in respect of the

Insurance company. The said statutory provision has not been correctly interpreted by the Deputy Commissioner of Labour, resulted wrong award of compensation in favour of the claimants. The award is to be granted by fixing liability on the owner of the vehicle/9th respondent.

6. This being the terms and conditions of the policy with reference to the provisions of the Motor Vehicles Act, the Deputy Commissioner of Labour has committed an error in fixing liability on the Insurance company instead of fixing liability on the owner of the vehicle.

7. Accordingly, the Award dated 07.08.2017 passed in E.C.No.433/2015 is set aside as far as appellant/M/s.New India Assurance Company limited is concerned. However, the liability is fixed on the 9th respondent, who is the owner of the vehicle. Thus, the 9th respondent is directed to pay the award amount along with the interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident and on such deposit, the respondents 1 to 8/claimants are permitted to withdraw the said amount. As far as the appellant/Insurance company is concerned, they are liable to pay the compensation. The appellant/Insurance company is permitted to withdraw the deposited amount with accrued interest by filing an appropriate application and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner for Employees Compensation,
(Deputy Commissioner of Labour)
Conoor, Nilgiris.

+1cc to M/s.J.Michael Visuvasam, Advocate Sr.6977

C.M.A.No.3005 of 2017

vsn II[co]
srg 26/02/2021