IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2902 of 2012

M/s.United India Insurance Co. Ltd.,
3, Giriram Buildings,
Main Road, Gobichettipalayam. .. Appellant

-Vs.-

1.Ayyammal
2.Minor Rajeswari
3.Minor Sathiyapriya
Minors represented by their mother Ayyammal
4.Muthugounder@Muthusamy Gounder
5.Pattakkal
6.K.Jothimani .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's compensation Act against the Award and decree dated 12.04.2012 made in W.C.No.502 of 2006 on the file of the Commissioner, Workmen's Compensation Tribunal, DCL, Salem.

For Appellant	: Mr.S.Arun Kumar
For Respondents 1 to 5	: Mr.K.S.Sivakumar
For Respondents 2 and 3	: Minors Rep by R1
For Respondent-4	: Died
For Respondent-6	: Served-No Appearance

JUDGMENT

The Insurance Company is the appellant herein aggrieved by the Award passed by the Deputy Commissioner of Labour, Salem in W.C.No.502 of 2005 directing the Insurance Company to compensate the claimants, despite the fact that the policy taken by the sixth respondent herein-owner did not cover for employee except the driver and the cleaner.

2. The facts in brief are as follows:-

The respondents 1 to 5, who are the legal representatives of one Somasundaram who died in a road accident, which had occurred in the course of his employment. It is their case that the said Somasundaram was employed under the sixth respondent and on 23.01.2005 at about 7.00 hours, he was engaged in drilling bore well in the field of Pootharam Sikvi of Magawale of Serthar Pollayi fiels, Sarapkanj Police Station, Sirohi District, Rajasthan. Besides the said Somasundaram, four others were working in the rig unit unexpectedly a rock from the well being dug had fallen into the unit, as a result of which, both legs of the said Somasundaram was cut and he had sustained fatal injuries all over his body. Though he was admitted in a hospital in Rajathan immediately, ultimately he succumbed to his injuries on 29.01.2005. The legal heirs of the said Somasundaram had therefore filed workmen's claim before the Deputy Commissioner of Labour, Salem claiming compensation of a sum of Rs.8,00,000/-.

3. The Insurance Company had taken a specific plea that it was only the lorry, which was insured with the appellant-Insurance Company and the deceased was not an employee engaged with the lorry. He was neither the paid driver nor the cleaner and therefore, the policy would cover the liability in respect of the deceased. Therefore, they had sought to be exonerated from the claim. However, the Deputy Commissioner of Labour, Salem held that the Insurance Company was liable. The Commissioner had observed that the policy which had been taken by the 6th respondent for the vehicle was a miscellaneous and special type of vehicle package policy and the vehicle has been described as a mobile drilling rig. Therefore, since the policy was of a miscellaneous and special type and as the policy was taken

in respect of the mobile drilling rig and the deceased was an employee of the sixth respondent, the Tribunal held that the Insurance Company was liable, particularly, since there was no specific exclusion available under IMT 47. The Tribunal had relied upon the judgement reported in ***2011 (1) TNMAC 614 [National Insurance Company Limited, Gobichettipalayam Vs. Palani Ammal and 5 others]***. Challenging the said order, the Insurance Company has filed the above appeal.

4. Heard the learned counsel on either side and perused the materials available on record.

5. The judgment which was relied upon by the Tribunal was a case where there was no specific exclusion under IMT 47 provided in the insurance policy, Therefore, the Insurance Company was held liable. However, in the instance case, a perusal of the Insurance Company Policy, which has been marked as Ex.R1 contains the exclusion clause IMT 47. The policy in question clearly contains the following endorsement:

"Subject to IMT endorsement printed herein / attached hereto 21,47,52, 24, 37"

IMT endorsement 47 is what is relevant in the instant case. Earlier, the said endorsement was in IMT endorsement 37. The said endorsement would read as follows:-

> *Condition No. 37:*
>
> *Mobile Cranes/Drilling Rigs.*
>
> *It is hereby declared and agreed notwithstanding anything to the contrary contained in this policy that in respect of the Motor Vehicle the Company shall be under no liability.*
>
> *a) Under Section I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto except or loss or damage arising directly from fire, explosion, self ignition or lightning or burglary, housebreaking or theft.*
>
> *b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the Insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.*

6. A reading of the judgment reported in ***2011 (1) TNMAC 614*** would clearly show that it is the old IMT No.37, that is now incorporated into as IMT No.47.

7. Therefore, a reading of the above endorsement clarifies that in the judgment mentioned supra, the policy did not contain exclusion under IMT 47, therefore, the Insurance Company was held liable, whereas in the instant case, Ex.R1 clearly shows that the policy is subject to the IMT 47. The deceased was neither the driver nor the cleaner of the vehicle and the accident has occurred not during the use of the vehicle. Therefore, the Insurance Company cannot be mulcted with the liability.

8. Consequently, the order passed by the Deputy Commissioner of Labour, Salem is set aside and the Civil Miscellaneous Appeal is allowed. No costs. The Insurance Company is exonerated from the liability. The claimant shall recover the Award amount from the sixth respondent/owner of the vehicle.

29.09.2022

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To

1. The Motor Accident Claims Tribunal,
   (Special Sub Court), Tirupattur.

2. The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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