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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.2005 of 2019 & 2796 of 2021
&
C.M.P.No.7154 of 2019

C.M.A.No.2005 of 2019:

M/s.The Oriental Insurance Co. Ltd.,
"Oriental House"
No.216/115, Prakasam Salai,
Broadway,
Chennai

...Appellant

Vs

1.Valli
2.Minor Balan
3.Minor Sakthi @ Nandhini

4.Panchalai

(RR2 & 3 Minors Rep by Mother and Natural
Guardian R1 Valli)

5.The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chennai - 600 002.

6.R.Radhakrishnan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923, against the order dated 01.08.2018 passed in W.C.No.355 of 2013 by the Joint Commissioner of Labour - II, Chennai.

For Appellants	:	Ms.Rathna Thara
For Respondents 1 to 4	:	Mr.K.Varadha Kamaraj
For Respondent 5	:	Mr.C.Vigneswaran
For Respondent 6	:	Mr.M.Devaraj



C.M.A.No.2796 of 2021:

1.Valli

2.Minor Balan

3.Minor Sakthi @ Nandhini

4.Panchalai

(Minors RR2 & 3 Rep by their Mother and
Natural Guardian 1st Appellant Valli)

...Appellants

Vs

1.The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chennai - 600 002.

2.R.Radhakrishnan

3.M/s.The Oriental Insurance Co. Ltd.,
"Oriental House"
No.216/115, Prakasam Road,
Broadway,
Chennai 600 108.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order dated 01.08.2018 passed in E.C.No.355 of 2013 on the file of Commissioner for Workmen's Compensation - II (Joint Commissioner of Labour - II), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent 3 : Ms.R.Rathna Thara

COMMON JUDGEMENT

The third opposite party / Insurance company has filed the appeal in C.M.A.No.2005 of 2019, challenging the order passed by the Commissioner for Workmen's Compensation II, (Joint Commissioner of Labour II), Chennai in W.C.No.355 of 2013. The claimants on the other hand have filed an appeal in C.M.A.No.2796 of 2021 to enhance the award amount. The brief facts preceeding the filing of the above appeals are as follows. The parties are referred to in the same array as before the Commissioner for Workmen's Compensation - II (Joint Commissioner of Labour - II), Chennai



2. The claimants are the wife and children of the deceased Shankar. The said Shankar was engaged as a casual labourer by the first opposite party through the second opposite party on a daily wage of Rs.500/-. The second opposite party who is a contractor has been engaged by the first opposite party, the Principal Employer for removal of an obstruction in the sewer system and for removal of the silt in the manholes within the Chennai Metropolitan limit.

3. On 26.09.2012 at about 1.30 hrs when the deceased was working in the drainage canal on the instructions of the second opposite party, he had swallowed the poisonous gas that emanated from the manhole of the drainage canal which he had opened. He had fallen into the canal and died on the very spot. The first and second opposite parties had not provided the deceased Shankar with adequate protective gear.

4. The claimants had moved the Commissioner for Workmen's Compensation II, Chennai, seeking compensation since the death had occurred in the course and out of the said Shankar's employment.

5. The first opposite party, the CMWSSB had filed a counter inter alia contending that the deceased Shankar was not an employee of the first opposite party and it was the second opposite party who had exercised control over him and paid wages to him. Therefore, it is only the second opposite party who can be held responsible.

6. The second opposite party had filed a counter admitting that the deceased Shankar was their employee and also stating that a sum of Rs.2,50,000/- had been paid by them to the 1st claimant and therefore they were not liable to make any further payment. That apart, the second opposite party had taken out Workmen's Compensation Insurance with the third opposite party and would therefore not be liable to make the payment.

7. The third opposite party in turn had filed their counter in which they had in very clear terms stated that even assuming that they are liable to pay compensation, it would only be to an extent of Rs.4,000/- per month, which was the declared wage as per policy.

8. The payment of the money to the claimants towards full and final settlement was sought to be proved by marking Ex.M.W.1. The Joint Commissioner of Labour II, Chennai, however did not make any reference to this defense that had been raised by the opposite parties and had proceeded to award a



compensation of a sum of Rs.7,73,560/- to the claimants.

9. The Joint Commissioner of Labour II, Chennai has not considered the defense raised by the third opposite party that their liability is restricted to a sum of Rs.4,000/- as is evident from the policy which has been marked as Ex.M.W.5 by the claimants.

10. Mrs.R.Rathna Thara, learned counsel appearing on behalf of the third opposite party would submit that unlike the case of Motor Accident, Workmen's Compensation Insurance is limited to the amount for which it has been insured. That apart, as per the endorsement, the Insurance company is not liable to pay any interest or penalty.

11. The learned counsel would rely on the Judgement reported in 2006 (5) SCC 200 - P.J.Narayan Vs. Union of India (UOI) and others, where the Hon'ble Supreme Court had held that the Insurance is a matter of contract between Insurance Company and the insured and in the absence of any statute directing them to pay interest they cannot be held liable for the payment of interest.

12. The learned counsel would also rely upon Section 12 of the Workmen's Compensation Act, now called the Employee's Compensation Act to state that the claimants ought to have first claimed compensation from the Principal employer (1st respondent) who is liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him. She would further submit that the liability of the Insurance Company in the light of the Insurance policy is therefore restricted only to a sum of Rs.4,000/- and not Rs.8,000/- as directed by the Joint Commissioner of Labour II, Chennai.

13. Mr.C.Vigneswaran, learned counsel appearing on behalf of the first opposite party would submit that the claimants have already received a sum of Rs.10,00,000/- as compensation from the first opposite party. He had produced a xerox copy of a document styled as "cWjpbkhHp gj;jpuk;" (Promissory Note) signed by the 1st claimant acknowledging receipt of a sum of Rs.10,00,000/- from the first opposite party. He would further submit that even the second opposite party, the employer of the deceased Shankar had also paid a sum of Rs.2,50,000/-. After having received the compensation, the claimants have once again filed this application for seeking compensation under the Act.



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14. The learned counsel for the second opposite party would submit that they do not have to pay any further amount since the claimants have received a sum of Rs.2,50,000/- towards full and final settlement of their claim and they had also undertook not to file any application seeking compensation before the Tribunal.

15. Per contra, Mr. Varadha Kamaraj, learned counsel appearing no behalf of the claimants would submit that the appellant / third opposite party have not get into the box. The third opposite party has not produced the policy and it is only before the Appellate Court that the policy has been produced and therefore this Court should not take note of the same.

16. The learned counsel would also submit that once the workmen is insured, he is entitled to be compensated in full by the Insurance Company. He would rely upon the Judgement reported in 2018 (1) TNMAC 764 - Divisional Manager, United India Insurance Co. Ltd., Vs. B.Annalakshmi in support of his contention.

17. The learned counsel for the first opposite party would once again reiterate the fact that a sum of Rs.10,00,000/- has been paid by the Government to the claimants apart from the second opposite party paying a sum of Rs.2,50,000/-. Therefore, no further amount was payable by the opposite parties.

18. Heard the learned counsel and perused the records.

19. Admittedly the claimants have received a sum of Rs.12,50,000/- towards compensation. This fact has not been mentioned in the petition filed by the claimants. They have deliberately made it appear as if they had not received any compensation from the opposite parties.

20. Further, Ex.M.W.5 Insurance Policy clearly shows that the liability of the Insurance Company is restricted to a sum of Rs.4,000/- per month and the Tribunal has erred in mulcting the appellant with the entire liability. In the Judgement reported in 2006 (5) SCC 200 - P.J.Narayana Vs. Union of India (UOI) and others, the Hon'ble Supreme Court has clearly stated that there is no statutory liability on the Insurance Company to pay interest and in the absence of the statute, the Insurance Company cannot be forced by the Courts to take the liabilities which they have not contracted to do.

21. That apart, the claimants have apparently received more than a sum of Rs.10,00,000/- as compensation for the death of the said Shankar from the first opposite party and a sum of Rs.2,50,000/- from the second opposite party. The proceedings



before the Joint Commissioner of Labour II, Chennai, has been initiated as if no amounts have been received as compensation. This is deliberately a case of suppression. The Workmen Compensation and the Joint Commissioner of Labour II, on seeing the evidence has come to the conclusion that they are entitled to a sum of Rs.7,73,560/- without taking into consideration the restriction of the liability of the 3rd opposite party (Insurance Company).

22. Therefore, the order passed by the Joint Commissioner of Labour II, Chennai directing the entire amount to be paid by the 3rd respondent is per se erroneous. The liability of the third opposite party is restricted to the sum assured. In the light of the above, the award is modified directing the 3rd respondent Insurance company would be liable to pay half of the sum of Rs.7,73,560/-

23. Considering the fact that over a sum of Rs.12,50,000/- has already been received by the claimants from the first and second opposite parties, no further orders directing the first and second opposite parties to pay compensation is required. The Civil Miscellaneous Appeal in C.M.A.No.2005 of 2019 is partly allowed. Consequently, connected Civil Miscellaneous Petition is closed.

24. In the light of the order passed in C.M.A.No.2005 of 2019, C.M.A.No.2796 of 2021 stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To,

The Commissioner for Workmen's Compensation - II
(Joint Commissioner of Labour - II),
Chennai

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.25970

+1cc to Mrs.R.Rathna Thara, Advocate SR.No.26001

+1cc to Mr.M.Devaraj, Advocate SR.No.26011

C.M.A.Nos.2005 of 2019
& 2796 of 2021

EV(CO)

GMV(21/06/2022)