



C.M.A.No.2044 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 13.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2044 of 2017

and

C.M.P.No.10976 of 2017

The New India Assurance Company Limited,
Divisional Officer,
III Floor, SNV Chamber Buildings,
No.482-483, Crosscut Road,
Gandhipuram,
Coimbatore – 641 012.

... Appellant/2nd respondent

Vs.

1.K.Suresh

...1st respondent/Petitioner

2.The Management,
C.P.C. Private Limited,
Registered Office No.3/207,
Mettupalayam Road,
Coimbatore – 641 030.

...2nd respondent/1st respondent



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Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Employee's Compensation Act, 1923, against the Award and Decree dated 14.11.2016 in E.C.No.10 of 2013 on the file of the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore.

For Appellant : Mr.M. Krishnamoorthy

For Respondents : Mr.A.Deivasigamani for R2

R1 – Served – No appearance

JUDGMENT

The Insurance Company is the appellant before this Court challenging the order passed by the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore, in W.C.No.10 of 2013. The parties are referred to in the same litigative status as in the claim petition.



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WEB COPY 2.The facts in brief are as follows:

The applicant had filed the above application seeking compensation of a sum of Rs.10 lakhs from the 1st and 2nd respondents. It is his case that he has been working in the 1st opposite party's company for over three years. During his engagement with the 1st opposite party on 22.07.2012 at about 11.30pm, his right forearm had got struck in a moulder machine, as a result of which, his right forearm had crushed and he sustained serious injuries. The applicant was given first aid and treated as inpatient at Rajarajan Hospital, Pudukottai and thereafter, at Kauvery Hospital, Trichy. He had been inpatient from 23.07.2012 to 03.08.2012. He had also undergone several surgeries. Considering the fact that the accident has occurred in the course of and out of his employment he has filed this application under Workmen's Compensation Act. The applicant had impleaded the 2nd opposite party, the appellant herein on the ground that the 1st



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opposite party had taken an insurance policy with the 2nd respondent for the period 14.12.2011 to 13.12.2012.

3.The 1st respondent had filed a counter *inter alia* contending that the applicant was his employee and that he had sustained injuries in the course of his employment. They had contended that the entire medical expenses had been borne by the 1st opposite party. Further, the applicant was drawing a salary of Rs.5,358/- and therefore, he was not entitled to a sum of Rs.10lakhs.

4.The 2nd respondent had filed a counter *inter alia* contending that the petitioner has to prove that he was employed under the 1st respondent and the petitioner is covered with the 2nd respondent so as to claim compensation. The 2nd respondent had also questioned as to whether the applicant was employed under the 1st respondent. They had sought for dismissal of the application on the ground that they were not liable to compensate to the injuries.



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WEB COPY 5.The learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore, on considering the evidence on record held that the accident had occurred in the course and out of the employment and that the applicant had incurred a total medical expenses of Rs.3,34,981/-. Apart from granting compensation of a sum of Rs.3,34,981/- towards compensation for the injuries, only a sum of Rs.6,49,576/- was ordered and the 2nd respondent was directed to pay the same. Challenging the said order, the 2nd respondent is before this Court.

6.The learned counsel for the appellant would submit that the insurance policy taken by the 1st respondent covers 36 workers to the extent of rupees one lakh each. That apart, the policy covered only the personal accident. Therefore, the 2nd respondent cannot be made liable to pay compensation.



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7.Per contra, the learned counsel for the applicant would submit that the policy covers an industrial accident as well and therefore, the Insurance Company is liable to compensate the applicant.

8.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent and perused the papers.

9.The policy in question is a Raasta Aapatti Kavach Policy. The risks that are covered are Road/Rail/Air Accidents, with industrial accdt. extn. The policy would also state that the persons are insured to a sum of Rs.36,000/- for personal accident. However, both counsels are not able to state as to whether each of the persons insured would be covered for the entire amount or whether it is restricted to a sum of Rs.1 lakh each. In fact, there is no discussion with reference to the extent of coverage under the Policy which has been marked as Ex.R.9.



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The liability of the 2nd respondent rests entirely on Ex.R.9 – Policy and the evidence and argument have not been properly advanced on the same.

Therefore, this Civil Miscellaneous Appeal is allowed and the matter is remitted back to the learned Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coimbatore, to enable the parties to let in evidence with reference to Ex.R.9 – Policy and the accident of liability of the 2nd respondent to indemnity the 1st respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To
The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Coimbatore.



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P.T. ASHA, J,

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