BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1120 of 2021
and
C.M.P(MD)No.10775 of 2021

The Management,
M/s.United India Insurance
Company Limited,
T.B.Hub, 1st Floor,
No.4, Bharathidasan Salai,
Cantonment,Trichy-1. ... Appellant/Second respondent

.vs.

1.Sethupathy ... 1st Respondent/Petitioner
2.M.Periyasamy ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the order of the Deputy Commissioner of Labour, Tiruchirappalli dated 25.10.2019 in W.C.No.16 of 2016

For Appellant : Mr.A.Ilango

For Respondents : No-appearance

JUDGMENT

The Insurance Company is the appellant herein. Challenging the award passed by the Deputy Commissioner of Labour in W.C.No.16 of 2016, the present Civil Miscellaneous Appeal has been filed.

2. Though notice has been served on the respondents, there is no representation on behalf of the respondents.

3. The first respondent has filed W.C.No.16 of 2016 seeking compensation under Section 22 of the Workmen Compensation Act for

the injuries sustained by him during the course of employment. The first respondent claimed to be the cleaner of the insured vehicle with the appellant herein and the second respondent is the owner of the vehicle. The appellant/Insurance Company filed a written statement *inter alia* contending that there is no valid policy coverage for the first respondent. After considering the materials available on record, the Deputy Commissioner of Labour has held that since the driver is found to be under influence of alcohol, he caused the accident and there is no employer-employee relationship. However, the Deputy Commissioner of Labour directed the Insurance Company to pay and recover the amount from the second respondent. Challenging the said finding and the award, the Insurance Company has filed this appeal.

4. The learned counsel appearing for the appellant would contend that Ex.R1/Policy, is covering the third party own damage and driver alone and additional premium was not paid for cleaner.

5. From the schedule of premium in the policy, I find that additional premium was paid to the driver and no premium was paid to the cleaner. Since the first respondent claims that he is a cleaner, he is not covered under the policy. Hence, in the absence of any additional premium being paid to extend the policy coverage to the cleaner, the first respondent is not covered under the policy. Consequently, the Insurance Company cannot be made liable to pay the compensation. Accordingly, the liability fixed upon the Insurance Company to pay and recover the amount is hereby set aside. Furthermore, violation of the policy condition is one-thing and non-extending of coverage policy is yet another thing. Since the instant case falls under latter clause, the Insurance Company cannot be directed to pay and recover the amount from the owner of the vehicle.

6. In this view of the matter, this Civil Miscellaneous Appeal is allowed and 'pay and recovery' ordered by the Deputy Commissioner of Labour is hereby set aside. The claim petitioner can claim the award amount from the owner of the vehicle. The award amount already deposited by the Insurance Company is permitted to be withdrawn by the Insurance Company. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

To

1. The Deputy Commissioner of Labour,
   Tiruchirappalli

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+1 CC to M/s.A. ILANGO, Advocate
(SR-22414[F] dated 29/04/2022)

JUDGMENT MADE IN
C.M.A(MD)No.1120 of 2021
and
C.M.P(MD)No.10775 of 2021
28.04.2022

SP/07/06/2022/2P/5C