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C.M.A.No.274 of 2016 and M.P.No.2311 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

THE HON-BLE **MR.JUSTICE P.B.BALAJI**

C.M.A.No.274 of 2016 and
M.P.No.2311 of 2016

M/s. New India Assurance Company Limited,
Post Box No.47, Kumaran Shopping Complex,
Kumaran Road,
Tiruppur 641601.

...Appellants/2nd Opp.Party

Vs.

1.Kokila
2.Nagarasan (Minor)
3.Akila Shree (Minor)
4.Dasan @ Guruva Dasan
5.Kannammal

...Respondents 1 to 5/Applicants

6.The Management,
M/s. Periyannayagi Amman Indane Gas Service,
SF No.168/4, 168/7, 168/8
Periyapalayam Village,
Mannarai (PO), Tiruppur.

...6th Respondents/1st Opp Party

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923 against the order in EC No.95 of 2014 dated 14.09.2015 on the file of Commissioner for Workmen Compensation,



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Deputy Commissioner of Labour, Coimbatore.

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For Appellants : Mr.R. Sivakumar

For Respondents : R1 – served (No appearance)
R2 & R3 minors Rep.by R1

* * * * *

J U D G M E N T

The Insurance Company is the Appellant in the above Civil Miscellaneous Appeal, aggrieved by the Order passed in E.C.No.95 of 2014 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Coimbatore.

2. The Applicants namely, Kokila, her two minor children represented by their mother Kokila and parents of the deceased Devarasu viz., Dasan @ Guruva Dasan and Kannammal, approached the Commission seeking compensation for the demise of the said Devarasu, claiming Rs.10 lakhs.

3. It is the case of the claimant that on 02.08.2014 the deceased was



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working in the 1st Respondent gas company, proceeded to attend a complaint of gas leakage problem at Sri Krishna Bakery situated on Universal Theater Road, Tirupur, and at that time the fire accident occurred, resulting in the unfortunate demise of said employee, Devarasu. He sustained burn injuries and subsequently succumbed to the same on 05.08.2014 at Ganga Medical Center Hospital, Coimbatore.

4. The deceased, according to the applicants, was earning Rs.9,500/- per month and he died only in the course of employment with the 1st Respondent and since the 1st Respondent was duly insured with the 2nd Respondent, Appellant herein, the Insurance Company was liable to pay compensation.

5. 1st Respondent filed its counter, admitting the employment of the deceased Devarasu with them. The 1st Respondent however, contended that since the 1st Respondent was insured with the 2nd Respondent/Appellant herein, the Appellant alone have to pay compensation under Employees Compensation Act.



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6. The 2nd Respondent/Appellant herein filed a counter stating that the policy that was taken by the 1st Respondent covers risk to public, in other words, it was a public liability policy and therefore, an employee of the 1st Respondent i.e., the deceased Devarasu was not liable to be compensated by the Insurer.

7. Before the Tribunal, the 1st Petitioner Kokila was examined as P.W.1 and Exs.P.1 to P.8 were marked. On the side of the 1st Respondent Ex.R1 Policy was marked. The Policy was marked not only by the 1st Respondent but also by the 2nd Respondent, Appellant herein.

8. The Tribunal negated the contention of the Appellant that being a public liability policy, they were not liable to pay compensation, and proceeded to award Rs.6,82,097/- towards compensation, holding that the accident occurred during the course of the employment and the employment of the deceased with the 1st Respondent company has been established.



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9. The Respondents have not chosen to appear despite steps taken by the counsel for Appellant. This Court therefore permitted the Appellant to serve summons to the Respondents by way of substituted service. Accordingly, paper publication has also effected in Malai Malar dated 07.03.2023, Tiruppur Edition, putting the respondents on notice of the hearing of the above C.M.A. Despite the said paper publication, there is no appearance on the side of the Respondents.

10. This Court proceeded to hear the learned counsel for the Appellant. The only contention raised by the learned Counsel for the Appellant is that the policy has been admittedly marked by not only the petitioner before the commission but also by the 1st Respondent, the employer and also the Appellant, the 2nd Respondent. The Policy clearly indicates that it is only a public liability policy. This Court has perused the policy issued by the 2nd Respondent to the 1st Respondent and found that the liability is specifically limited to public liability to a limit of Rs.5 lakhs. No extra premium has been paid for covering employees of the 1st Respondent Company. Therefore, the appellant cannot be called upon to compensate



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cases of this nature where an employee of the 1st Respondent suffered injuries and subsequently, succumbed to the said injuries.

11. It is also brought to the notice of this Court that the Appellant has deposited the entire award amount. It is however, not known whether the Respondents have withdrawn the award amount or any portion thereof.

12. This Court has considered the submissions of the learned counsel for the Appellant and finds force in his argument that the approach of the Tribunal in passing the Award is totally erroneous and contrary to the settled legal position.

13. The Tribunal has found fault with the Insurance Company for not filing the proposal form. Admittedly, the policy that has been issued which is the final document, which has been marked not only on the side of the Appellant but also marked on the side of the family of the deceased employee as well as employer. Once the Policy issued there is no necessity to fall back on the proposal form, which is only a negotiation before the



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contract is concluded. The Tribunal therefore certainly went in error in fastening the liability on the Appellant Insurance Company. The Liability was limited to loss occasioned to general public and could not extent to an employee of the Insured. This Court has to necessarily set aside the order passed by the Commissioner of Workmen Compensation Act, Deputy Commissioner of Labour, Coimbatore, for the above said reason.

14. In fine, the Civil Miscellaneous Appeal stands allowed and the Judgment and Decree is set aside passed by the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Coimbatore, in E.C.No.95 of 2014 dated 14.09.2015. It is open to the Appellant/Insurance Company to take out appropriate proceedings for recovering the amounts that have been withdrawn, if any by the Respondents. There is no Order as to costs. Consequently connected Miscellaneous Petition is closed.

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P.B.BALAJI.,J.

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To

The Deputy Commissioner of Labour,
Commissioner of Employee Compensation Act,
Coimbatore.

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