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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HONOURABLE Mr. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2954 of 2021
and C.M.P.No.16888 of 2021

The Manager
National Insurance Company Ltd.,
Branch Office
No.78, Thiruvengadasamy Chetty Street
Erode – 638 001. ... Appellant / 2nd Opposite party

Vs.

Thavamani (Deceased)
W/o Stalin
1.Stalin
2.Minor Pravinraj
3.Minor Subasri Priyan
(Minor claimants 2 & 3 are represented
by their guardian father – Stalin)

(RR2 &3 are declared as major and their
Guardian father Mr.Stalin is discharged from
guardianship of RR2 & 3vide order of
this Court dated 12.12.2023) ... Claimants

4.RPP Infra Projects Ltd.,
S.F.No.454, Rathupathynaickenpalayam
Railway Colony Post
Poondurai Road, Erode – 638 002. ... Respondents / 1st Opposite party

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Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the award of the Commissioner for Employees Compensation, Coonoor dated 22.06.2020 made in E.C.No.150 of 2017.

For Appellants	:	Mr.D.Bhaskaran
For Respondents	:	R1 – Died Mr.N.Palanikumar for RR2 & 3 Mr.S.Kanraj for R4

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the award in E.C.No.150 of 2017 dated 22.06.2020 on the file of the Workmen Compensation Tribunal (Labour), Deputy Commissioner of Labour, Coonoor.

2.For the sake of convenience, parties are referred to herein according to their litigative status before the Tribunal.

The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

3.The 1st claimant/Thavamani was an injured, during the course of

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employment. At the time of accident, she was working under the 1st respondent. On 09.09.2016 at about 6.00 pm, when the 1st claimant was doing the construction work, sustained with severe injuries. She had undergone treatment from 10.09.2016 to 20.09.2016 and thereafter, she had continued her treatment at various hospitals. Therefore, seeking compensation for the injuries sustained by her during the course of employment, she has come forward with the claim petition, seeking compensation of Rs.12 Lakhs from her employer - 1st respondent as well as the 2nd – Insurance Company.

4.After due enquiry, the Tribunal has held that there is a employer and employee relationship between the 1st claimant – Thavamani and the 1st respondent. Since there is a insurance coverage for the workmen, who are working under the 1st respondent, the 2nd respondent was directed to pay the compensation. Further, the Tribunal quantified the compensation, after considering the injuries sustained by the 1st claimant and awarded a sum of Rs.6,53,990/- under the head 'loss of income' and a sum of Rs.2,91,809/- under the head 'medical expenses incurred'. Further, the Tribunal awarded 12% interest to be payable for the amount of Rs.6,53,990/- from the date of accident

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till the date of deposit by the 2nd respondent – Insurance Company.

5.Aggrieved over the Award directing the 2nd respondent/Insurance Company to pay the compensation and also the interest for the compensation awarded, this Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company.

6.The learned counsel for the appellant/Insurance Company submits that the 1st respondent has entered into a contract of Insurance with the 2nd respondent with the limited liability to indemnify the 1st respondent to the extent of loss of income and the Insurance Company has not agreed to pay the medical expenses and interest on the compensation. The payment of medical expenses and interest part shall be met by the employer herein. Hence, the Award directing the payment of above heads are not sustainable and prays to modify the Award.

7.Countenancing the above arguments, the counsel for the claimants submit that since the workmen compensation is a welfare legislation enacted to secure the interest of the poor workmen, the Tribunal has rightly directed the

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2nd respondent/Insurance Company to pay the entire compensation as per the policy and even if they dispute that they are not liable to pay interest and medical expenses, it would be appropriate to direct the Insurance Company to pay the above compensation and recover the same from the employer and prays to confirm the Award of the Tribunal.

8.Considered the submissions of the learned counsel on either side and perused the materials available on record.

9.The substantial question of law raised by the Insurance Company is, whether the Tribunal is entitled to direct the Insurance Company to pay interest on compensation and medical expenses, in the absence of any contract of insurance to that effect or not ?.

10.The issue of payment of interest and medical expenses by the Insurance Company in the nature of miscellaneous policy is no longer *res integra* and this Court in many number of Judgments has held that as per the contract of insurance is entered into by and between the employer and the

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insurer, the insurer shall be liable to indemnify the employer. However, if the insurance policy is only a limited policy and when there is a specific condition between the employer and the Insurance Company under the policy, the Insurance Company is not liable to pay the interest and penalty. In the light of the Judgment of the Hon'ble Supreme Court in ***New India Assurance Co. Ltd., Vs. Harshabhai Amrutbhai Modhiya*** reported in ***2006 (5) SCC 192,*** interest need not be payable by the employer. The relevant paragraph is extracted hereunder:-

> *"14.By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provided for any restriction in the matter of contracting out by the employer vis-a-vis the insurer.*
>
> *15. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the*

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Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimise his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.

....

....

19. As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. <u>Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of contract.</u> In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not

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prohibited by a statute."

11.As held above, there is no statutory liability to indemnify the employer under the Workmen Compensation Act. The statutory liability to pay compensation to the employee is on the employer. He can opt for insurance coverage by entering separate contracts of insurance with the Insurance Company to secure the compensation to the workmen in case of bodily injury or death occurred to him. In this case, the policy taken between the employer and the Insurance Company is a limited policy and the same was marked as Ex.P.8. In view of the above settled proposition, the medical expenses, interest on the compensation amount awarded under the head 'loss of income' has to be borne only by the employer, viz., the 1st respondent.

12.Accordingly, this Civil Miscellaneous Appeal is partly allowed on the following terms:-

(i) The impugned Award dated 22.06.2020 is set aside to the extent that the 2nd respondent/Insurance Company is not liable to pay medical expenses

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and interest awarded by the Tribunal;

(ii) The 2nd respondent/Insurance Company is directed to pay the compensation amount of Rs.6,53,990/-, awarded under the head 'loss of income' if not already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment;

(iii) The 1st respondent/employer is directed to pay Rs.2,91,809/- under the head 'medical expenses' and the interest portion, i.e., 12 % interest for the total compensation amount of Rs.9,45,799/- within a period of six weeks from the date of receipt of a copy of this Judgment; Interest ordered herein is payable from the date of accident till the date of realisation;

(iv) On such deposit, the entire award amount can be equally shared by both the claimants 3 and 4;

(v) If the 2nd respondent/Insurance Company has already deposited the Award amount then they are permitted to withdraw the excess amount already deposited by them by way of interest;

(vi) No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order / Non-Speaking Order
Neutral citation : Yes / No
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K.RAJASEKAR, J.,

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To
1. The Commissioner for Employees Compensation, Coonoor.
2. The Section Officer, V.R.Section, Madras High Court, Chennai

C.M.A.No.2954 of 2021

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