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C.M.A.No.2597 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2022

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A. No.2597 of 2022
and C.M.P.No.20237 of 2022

The New India Assurance Company
Limited, Third Party Claim Hub,
Bombay Mutual Building,
6th Floor, NSC Bose Road,
Chennai – 600 001.

...Appellant

Vs.

1. Mrs.G.Selvambal

2.M/s.Keyam Engineering Enterprises
New No.22, Old No.38, 3rd Street,
Kamarajar Nagar, Thiruvanmiyur,
Chennai – 600 041.

...Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employee's Compensation Act, 1923, against the order dated 05.08.2022 made in E.C.No.21 of 2020, on the file of Court of Commissioner for Employee's Compensation/Joint Commissioner of Labour – 1 , Chennai – 6.

For Appellant : Mr.K.Vinod
For Respondents : Mrs.S.R.Suga for R1
R2 - Exparte

J U D G M E N T

This appeal has been filed challenging the finding of the learned Joint Commissioner of Labour I, Chennai – 6, for the Employee's Compensation Act, holding the appellant/Insurance Company is liable to pay compensation to the first respondent herein.

2. The appeal arises under the following circumstances:

(a) The first respondent filed a claim petition before the learned Joint Commissioner of Labour-I, Chennai - 6 (hereinafter referred to as Commissioner for the sake of convenience), stating that her son by name Mr.Rajasekaran/deceased employed under the second respondent/Keyam Engineering Enterprises, herein; that on 31.01.2020, he was electrocuted



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during the course of employment and died on the spot, hence, the second respondent and the appellant as the insurer are jointly and severally liable to pay compensation to the first respondent.

(b) The second respondent/Keyam Engineering Enterprises filed a counter stating that they are not responsible for the accident and that in any case, they had taken the Employee's Compensation Insurance with the appellant herein.

(c) The appellant/Insurance Company filed a counter denying the averments in the claim petition and stated that the first respondent had to establish that the deceased was in the employment of the second respondent herein; and that in any case, the compensation claimed by the first respondent is excessive.

(d) The first respondent examined herself as P.W.1 and marked ten documents as Exs.P.1 to P.10, before the learned Commissioner. The second respondent herein after filing the counter remained exparte before the



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Tribunal. The appellant did not examine any witness or marked any document on their side.

(e) The learned Commissioner after considering the evidence on record held that the accident took place during the course of employment and directed the appellant to pay a compensation of Rs.15,59,850/- together with interest @ 12% per annum to the first respondent with liberty to the appellant to recover the portion of the compensation amount which is not due and payable by them as per the insurance policy from the second respondent herein.

(f) Aggrieved by the said finding, the appellant had preferred the above appeal.

2. The learned counsel for the appellant submitted that as per the policy document/Ex.P.7, twenty employees with monthly wages of upto Rs.8,000/- were covered under the Insurance Policy; that the employees with monthly wages above Rs.8000/- are not covered; that even assuming the appellant is held to be liable, its liability is only to the extent of monthly wages to the



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tune of Rs.8,000/- and not Rs.15,000/- computed by the learned Commissioner. The learned counsel further submitted that the direction to pay and recovery is also erroneous in the absence of insurance policy for the employees earning more than Rs.8,000/-. The learned counsel therefore, prayed for setting aside the award of the learned Commissioner.

3. The learned counsel for the first respondent, per contra, submitted that direction to the appellant to pay the compensation and recover from the second respondent herein cannot be faulted; that therefore, there was no reason to interfere with the award of the learned Commissioner and prayed for dismissal of the appeal.

4. On perusal of the award of the learned Commissioner and the other documents filed along with the appeal, it is seen that while the deceased employed with the second respondent herein. P.W.1, is the mother of the deceased was examined to prove the manner in which the accident took place. There is no contra evidence let in on the side of the appellant or the second



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respondent herein. Therefore, the Tribunal rightly found that the accident took place during the course of the employment.

5. The Tribunal determined the wage of the deceased as Rs.15,000/- and fixed the compensation amount as Rs. 15,59,850/- by considering the relevant factor and Section 4 of the Employees Compensation Act, 1923. However, the question is whether the appellant is liable to pay the entire compensation amount so determined by the learned Commissioner. As stated earlier, the second respondent had an insurance policy called the "Employees Compensation Insurance" with the appellant. As per the said policy marked as Ex.P7, the appellant is liable to indemnify the second respondent in case of any claim made by the employees whose wage is less than Rs.8000/-. Therefore, this Court is of the view that considering the said policy condition, the appellant's liability can be restricted only to the extent of the wages of Rs.8,000/-. The balance amount of compensation determined by the Tribunal along with the interest is liable to be paid by the second respondent herein. The appellant is not liable to pay interest as per the terms



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of the policy. Thus, the appellant would be liable to pay Rs.8,31,920/-.

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$$\text{Rs.8,000/-} \times 50/100 \times 207.98 = \text{Rs.8,31,920/-}$$

The balance amount of Rs.7,27,930/- along with accrued interest at 12% per annum for the entire compensation amount fixed by the Tribunal is liable to be paid by the second respondent herein.

6. It is stated that the appellant had deposited the entire amount with accrued interest with the learned Commissioner. The first respondent would be entitled to Rs.8,31,920/- from the deposited amount. Thus, the appellant would be entitled to refund of a sum of Rs.7,27,930/- together with interest deposited by them before the learned Commissioner. It is open to the first respondent to recover the sum of Rs.7,27,930/- with interest @12% per annum for the entire compensation of Rs.15,59,850/- from the second respondent herein in the manner known to law.

7. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, the connected miscellaneous petition



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is closed.

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Index: Yes/No

Neutral Citation: Yes / No

Copy To:-

1. The Joint Commissioner of Labour – 1,
Court of Commissioner for Employee's Compensation,
Chennai – 6.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.

SUNDER MOHAN, J.

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