IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.369 of 2017
and
Civil Miscellaneous Petition Nos.1431 and 1432 of 2017

Branch Manager,
The Oriental Insurance Co., Ltd.,
R.T.O., Road,
Saththuvachchari,
Vellore. ... Appellant / 4th Respondent

Vs.

1. Tmt. Susila ... Respondent/Petitioner

2. M/s. S. K. Transport,
   No.50, Thambu Chetty St.,
   Chennai – 1.
3. Branch Manager,
   The New India Assurance Co., Ltd.,
   Officer Line,
   Vellore – 1.
4. Thiru. Vasudevan ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, against the Judgment and Decree dated 14.09.2015 made in W.C.No.37 of 2005 on the file of the Commissioner for Workmen Compensation cum Assistant Commissioner for Labour-I at Madras.

For Appellant	:	Mr. J. Chandran
For R1	:	Mr. A. Saranraj
For R3	:	Ms. Sangamithirai
For R2 & R4	:	Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability to pay the compensation as directed by the Tribunal in the award passed in W.C.No.37 of 2005, dated 14.09.2015, on the file of the Deputy Commissioner for Workmen Compensation-I, Chennai.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The brief facts of the case of the claimant is that the son of the claimant, namely Prakash, was working as a lorry driver under the third respondent. On 04.05.2004 at about 3.00 a.m., the lorry bearing Registration No.TN 72 Y 1656 belongs to the third respondent, capsized near Hosur Hameediya Petrol Bunk on Hosur to Krishnagiri Road. While the deceased was deputed to load the goods from the capsized lorry to the another lorry bearing Registration No.TN 21 Q 8667. The deceased and

other persons were on the road near the capsized lorry, at that time, an unidentified lorry came in a rash and negligent manner, hit on the deceased, which resulted in causing severe injuries and succumbed. Since son of the deceased was a driver, working under the third respondent and the occurrence was taken place during the course of employment, the claimant claimed compensation under the Workman Compensation Act, 1923. For the occurrence, criminal case in Crime No.86 of 2004, under Sections 277 and 304(A) IPC was registered against the unknown lorry.

4. The first respondent herein is the owner of the capsized lorry who has not contested the claim and was remained ex-parte. The second respondent is the insurer of the capsized lorry and filed counter contended that they were not aware about the occurrence and they have also denied the occurrence had taken place and prayed to dismiss the claim petition.

5. The third respondent is the owner of the lorry bearing Registration No.TN 21 G 8667, has not contested the claim and was remained ex-parte.

6. The fourth respondent-Insurance Company is the insurer of

the third respondent vehicle bearing Registration No.TN 23 Q 8667 and contended that the cheque issued by the third respondent for insurance premium was dishonoured and the same was also timely intimated to the third respondent. Since the cheque has been dishonoured, the fourth respondent is not liable to indemnify the third respondent and prays to absolve the liability from paying compensation to the appellant herein.

7. Before the Labour Commissioner (Commissioner hereafter), the claimant/petitioner examined himself as P.W.1 and marked Exs.P1 to P4. On the side of the fourth respondent, R.W.1 examined and Exs.R1 to R3 were marked.

8. Based on the evidence placed on record, in point No.1, Commissioner has held that the deceased was an employee under the third respondent and died during the course of employment. In point No.2, the Tribunal has awarded a sum of Rs.4,02,134/- as compensation. In point No.3, the Tribunal has held that the fourth respondent is liable to pay the compensation quantified.

9. Aggrieved over the award passed, this appeal has been filed

by the fourth respondent-Insurance Company, on the ground that,

1) whether Labour Commissioner is right in directing the Insurance Company to indemnify the insured, when the cheque issued for payment of premium for the policy is dishonoured?

2) If so to what extent?

10. The learned counsel for the Insurance Company has submitted that the cheque issued for issuance of the insurance policy was dishonoured and the same was also timely intimated to the third respondent. Since, the cheque was dishonoured, the policy shall not be considered as a valid policy and the Insurance Company is not liable to pay the compensation and prays to set aside the direction to pay compensation, by the fourth respondent, to the claimant.

11. The learned counsel for the claimant submits that there was no proper intimation delivered to the owner of the vehicle regarding the dishonour of cheque. During the enquiry, the Insurance Company has not produced any proof to show that proper intimation was delivered to the owner of the vehicle, and it was cancelled. In absence of any evidence to show that the dishonour of cheque and cancellation of policy was

communicated to the owner of the vehicle, the Insurance Company could not be absolved from its liability.

11(a). I have considered the submissions made on both sides and also perused the materials placed on record.

12. The question of law raised herein is no longer *res integra* and the Hon'ble Supreme Court in ***United India Insurance Company Ltd., vs. Laxmamma and Others [2012 (5) SCC 234]*** has observed in paragraph Nos.26 and 27 is extracted hereunder:

> *"26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the*

third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

27. Having regard to the above legal position, insofar as the facts of the present are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16.04.2004 to 15.04.2005 for which premium was paid through cheque on 14.04.2004. The accident occurred on 11.05.2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13.05.2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21.05.2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants."

13. The Division Bench of this Court in the case of ***TATA AIG Insurance Company vs. Ramalakshmi and Others [C.M.A. (MD). No.896 of 2017] [MANU/TN 5214/2021]*** has followed the Judgement of the ***United India Insurance Company Ltd., vs. Laxmamma and Others*** case cited above, has held in Paragraph No.19 as follows:

"19. A similar view was taken in the subsequent judgment reported in 2016(2) TN MAC 520. Expect in the decision first cited above, in the subsequent decisions, it has been clearly held that in the event of dishonour of cheque, which was issued for payment of premium amount, if the policy was cancelled before the accident takes place, the insurer cannot be fastened the liability to satisfy the award amount. In the case of intimation of cancellation of policy after

> *the accident, the insurer is liable to pay the award amount and permitted to recover from the insured. In the case on hand, the evidence of R.W. 1 and Exs.R1 to R4 would indicate that the cheque issued for payment of premium amount for the offending vehicle was not honoured, however, there is nothing on record to prove that before the accident, the cancellation of the policy was intimated to the insured. Hence, in our considered view, the appellant Insurance Company is liable to pay the award and thereafter, it can recover from the owner of the vehicle".*

14. In the case in land, to prove the fact, that the cheque was dishonoured and it was also timely intimated to the third respondent, the Insurance Company has examined Law Officer of the Insurance Company as R.W.1. He has deposed before the Tribunal that the third respondent has sent the cheque No.1810 dated 14.08.2003 for issuance of policy. Based on the same, the cheque was presented for encashment and it was returned on the ground that "insufficient funds" on 28.08.2003. It was immediately intimated to the third respondent and even thereafter, the premium amount was not paid by the third respondent.

15. In cross examination, he has stated that he was not aware about facts whether the intimation about the dishonour of cheque served on the third respondent or not. There is no evidence produced before the

Tribunal to show that the intimation was properly delivered to the third respondent regarding the dishonour of cheque and also the cancellation of policy.

16. Admittedly, the policy was issued on 14.08.2003 by the fourth respondent and the same which is a package policy which covers the workman of the respondent. Subsequently it was cancelled, on the ground that the cheque issued for payment of premium dishonoured.

17. From the evidence of R.W.1, the Insurance Company was not able to prove the fact that, information regarding cheque dishonour was communicated and subsequently policy was cancelled and insurer was put on notice. The Tribunal has considered the above aspect and has rightly concluded that the Insurance Company has failed to prove the fact that the cancellation of the policy was intimated to the vehicle owner and since the evidence of R.W.1 is not sufficient to prove the fact that proper intimation regarding cancellation is given to the third respondent, the Insurance Company is liable to pay the compensation.

18. The Tribunal has rendered finding on the facts, and the same could not be re-appreciated in this appeal since scope of challenging

the Award passed under Workmen Compensation Act, is only on substantial question of law, and this Court finds no merits in the appeal. Accordingly, the appeal filed by the Insurance Company is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The Award and Decree passed by the Commissioner-I for Workmen Compensation cum Assistant Commissioner for Labour-I at Chennai, made in W.C.No.37 of 2005, dated 14.09.2015 is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount within a period of six weeks from the date of receipt of a copy of this Judgement to the credit of W.C.No.37 of 2005, on the file of the Commissioner-I for Workmen Compensation cum Assistant Commissioner for Labour-I at Chennai. There shall be no order as to costs. Consequently, connected miscellaneous petitions stands closed.

17.08.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Commissioner-I for Workmen Compensation cum
   Assistant Commissioner for Labour-I,
   Chennai.

2. The Section Officer,
   V.R.Section,
   High Court,
   Chennai.

K.RAJASEKAR,J.

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C.M.A.No.369 of 2017

17.08.2023