IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.68 of 2017

New India Assurance Company Limited
Third Party Claims Division,
No.45, Moore Street, Chennai-1 .... Appellant

Vs

1. Johal Carriers Private Limited,
   34/2, Ennore Highway, Thiruvotriyur, Chennai-19

2. R.Jothilakshmi
3. R.Pavithra
4. R.Bharat
5. P.Poongani
6. P.Poongodi Perumal @ Perumal .... Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 03.11.2014, made in ECOP.No.525 of 2012, by the Deputy Commissioner of Labour II, Chennai.

For Appellant : Mr.SP.Chockalingam
For Respondents : Mr.R.Dhamodaran-R1
RR2 to 6 -Set Exparte

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JUDGMENT

This Civil Miscellaneous Appeal has been filed, by the Insurance Company, against the Judgement and Decree, dated 03.11.2014, made in E.C.No.525 of 2012, by the Deputy Commissioner of Labour II, Chennai, fixing the entire liability on it.

2. The Respondents 2 to 6 herein/claimants, who are the wife, daughter, son, and parents of the deceased, namely, P.Ranjitkumar, have filed the claim petition in E.C. No.525 of 2012 on the file of the Deputy Commissioner of Labour II, Chennai, seeking a compensation of Rs.10,00,000/- for the death of the deceased, who died in a motor road accident, which took place on 22.05.2005, during the course of his employment as a Driver under the 1st Respondent. The claim petition was resisted, on various grounds, by the Appellant Insurance Company and 1st Respondent Employer, by filing separate counters. On the side of the claimants, PW.1 was examined and Ex.P1 to Ex.P9 were marked. On the side of the Employer, RW.1 was examined and Ex.R1 to Ex.R8 were marked. On the side of the Appellant Insurance Company, neither any witness was examined nor any document was marked.

3.Finding that the deceased died in the alleged accident during the course of his employment as a Driver under the 1st Respondent company and there was no breach of the policy conditions between the Employer and the Appellant Insurance Company, the Labour Commissioner has awarded a total compensation of Rs.4,20,468/- to be payable by the Appellant Insurance Company, within a period of 30 days from the date of the order, failing which it shall carry interest 12% p.a. after 30 days from the date of the accident till the date of realisation. Aggrieved by the same, this appeal has been filed by the Appellant Insurance Company.

4. The learned counsel for the appellant/Insurance Company would submit that 1st respondent company has taken Workmen's compensation (General) Policy No.710500/41/04/00028 covering the period from 02.08.2004 to 31.07.2005 (ie.12 months) for 400 drivers/employees at the estimated wages of Rs.250/- per month per person. In all estimated wages of Rs.12,00,000/- (ie. Rs.250/- X 12 = Rs.3000/- X 400 persons = Rs.12,00,000/-) and paid total premium of Rs.42,282/- on 02.08.2004. While the deceased was earning Rs.6,000/- per month as Salary from the 1st respondent company, as per the contract, the deceased covered wages

at the rate of Rs.250/- per month only and while to that extent only, 1st respondent company has paid the Insurance to the deceased, the Insurance Company is liable only to the extent of Insurance, it has provided for. ie.Rs.250/- only. Whereas, the learned Deputy Commissioner had committed error in arriving at a finding that the Insurance Company has failed to prove that its liability is limited to the extent of Insurance cover even though Ex.P7-Policy Document has been produced contemplating the terms and conditions of the Insurance Policy. Hence, the reasoning adopted and the finding arrived by the learned Deputy Commissioner cannot be sustained either in law or on facts and hence it is liable to be set aside.

5. The learned counsel for the 1st respondent company would submit that the said deceased was covered by Workmen Compensation Policy No.710500/41/04/00028 valid from 02.08.2004 to 31.07.2005 (ie.12 months) taken with the 2nd opposite party and that any compensation to be awarded by this Hon'ble Forum has to be paid by the Insurance Company only. Though wages at the rate of Rs.2,262/- only was paid to deceased Ranjitkumar, Workmen Compensation Policy was taken by the 1st respondent company at the rate of Rs.4,000/- per month as

wages for all the drivers working under them. Hence, the 1st respondent company is not liable to pay the compensation and the appellant/Insurance Company is alone liable to pay the compensation since on the date of accident ie. 22.05.2005, the said Workmen Compensation Policy is valid and subsisting and the same covers the 1st claimant's husband also.

6.Heard the learned counsel for the appellant and the learned counsel for the 1st respondent as well as perused the materials available on record.

7. On a perusal of the records, it is admitted fact that the deceased died in a road accident during the course of employment under the 1st respondent company herein and the 1st respondent company has paid Insurance amount under the Workmen Compensation Policy covering from 02.08.2004 to 31.07.2005. Since the date of the accident occurred on 22.05.2005, during the valid period of policy, it is effective and valid policy. However, it is the contention on the side of the Insurance Company is that while the 1st respondent company has paid the Insurance amount only to the extent of Rs.250/- per employee, the Insurance Company is liable to pay the compensation to that extent only and not for full wages drawn by the deceased while the insurance amount has not been paid for full wages drawn by the deceased.

8. On a perusal of the Policy, it reveals that the 1st respondent company paid the net premium for a sum of Rs.42,282/- and totally Rs.45,665/- including Service Tax which is fixed as an annual Salary for 400 employees under the Workmen Compensation Policy. The officials of the Insurance Company are very much aware that it is not acceptable salary and it is not minimum wages as per the Statue. Under the Employees Compensation Act, the Central Government periodically issuing notifications fixing the minimum wages, so also the respective State Governments are passing necessary orders fixing the minimum wages under the provisions of the Minimum Wages Act. Therefore, those minimum wages must be the benchmark for the purpose of calculating the premium and the premium cannot be calculated at the whims and fancies of the Insurance Company and after accepting the premium and entering into a policy, they cannot shift their liability by stating that they are bound only by the terms and conditions of the contract. While the right of the workmen is ensured under the Statute, the grant of compensation is not restricted with the contract between the employer and the Insurance Company. The workmen is the beneficiary. Therefore, the interest of the workmen is to be taken into account both by the employer as well as the

Insurance Company. Under such circumstances, the Insurance Company is obligated to ensure that the employer is following the rules and regulation of the policy correctly.

9. In the event of collecting impracticable and lesser premium from the 1st respondent company, the Insurance Company cannot escape from the liability stating that the Insurance company is liable to pay the compensation to the extent of the premium paid for the deceased. Ultimately, the very purpose and object of the Workmen Compensation Act would be defeated. Hence, this Court is not inclined to interfere with award passed by the learned Deputy Commissioner and the same is hereby confirmed.

10. In the result, the Appeal is devoid on merit and it is dismissed. No Costs.

29.09.2023

Lbm
Index:Yes/No
Web:Yes/No
Speaking/Non Speaking

A.A.NAKKIRAN, J.

Lbm

To:

1. The Deputy Commissioner of Labour II, Chennai.
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.68 of 2017

29.09.2023