BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 24.03.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.464 of 2017
and CMP(MD).No.4983 of 2017

The United India Insurance Company Ltd.,
West Veli Street
Madurai 625 001 ... Appellant

vs.

1.Rajaram

2.Minor R.Pushpavalli

3.Minor R.Selvakumar

4.M.Pojarajan ….Respondents

(Minor 2nd & 3rd respondents
represented by their father
and guardian 1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 17.11.2016 of the Commissioner for Workmen's Compensation, Madurai passed in W.C.No.87 of 2012 and allow this appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R3 :Mr.N.V.Sureshkumar

For R4 : Mr.T.Ponramkumar

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the order of pay and recovery passed by the Commissioner under Workmen Compensation Act.

2.The first respondent in the claim petition is a contractor who has taken a group insurance with the second respondent namely United India Insurance Company Limited. As per the said policy condition, he has taken a policy for 8 female helpers with an information that the total salary paid to the 8 female helpers would amount to Rs.1,44,000/-.

3.In the claim petition, it has been mentioned that the wife of the first claimant and the mother of the claimants 2 and 3, was working as female helper in the first respondent construction company. At that time, she had fallen down from the third floor and she had died on the way to the hospital. According to the claimants, she was earning a sum of Rs.8,000/- per month including batta. Hence, they sought for a sum of

Rs.10,00,000/- towards compensation.

4.The employer namely the construction company had remained exparte and the Insurance Company had filed a counter contending that the quantum prayed for is excessive in nature and she is a female helper and the amount could be disbursed only as per the policy condition.

5.The Commissioner for Workmen Compensation after considering the evidence and records filed on either side, arrived at a finding that the deceased is entitled to a compensation of Rs.5,89,717/-.

6.The insurance company had pointed out the terms of the insurance policy and contended that as per policy condition, the wages for a worker for every month is just Rs.1,500/- and they will be liable to idemnify the employer only to the said extent and any amount which is awarded beyond Rs.1,500/- per month has to be paid only by the employer. The Commissioner after accepting the said condition had directed the insurance company to pay the entire award amount and thereafter, recover the same from the employer. This award is under challenge in the present appeal.

7.The learned counsel for the appellant/insurance company had contended that as per the policy condition, the monthly salary of a female helper is Rs.1,500/-. Any quantum of compensation could be only up to the level of Rs.1,500/- and it cannot exceed the said quantum. If any excess amount is awarded by the Commissioner under the Workmen Compensation Act and the same has to be paid only by the employer. There is no provision under the Workmen Compensation Act for directing the insurance company to satisfy the award and thereafter, recover the same from the employer. When there is no separate provision for pay and recovery order, the order of the Commissioner for Workmen Compensation is illegal and the same is liable to be set aside.

8.The learned counsel for the respondents/claimants had contended that already a sum of Rs.1,00,000/- has been paid by the insurance company to the claimants as per the award of the Workmen Compensation Commissioner. However a sum of Rs.58,843/- has to be paid by the Insurance Company. Hence, he prayed that the balance amount may also be paid by the Insurance Company and the Insurance Company may be directed to recover the same from the employer.

9.The learned counsel for the respondent/employer had further contended that the insurance policy covers the entire quantum of award to be passed by the Workmen Compensation Commissioner and the employer cannot be held liable once there is a group insurance policy in favour of all the employees.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The issue that arises for consideration in the present appeal is whether the insurance company can be directed to satisfy the entire award amount and thereafter, permitted to recover the same from the employer or not.

12.I have perused Exhibit R1-proposal form submitted by the employer and the policy issued by the insurance company which is marked as Exhibit R2. A perusal of both these documents will indicate that the employer has taken a group insurance policy in respect of 8 female helpers totaling the annual wages at Rs.1,44,000/-. Therefore, it could be deducted that their monthly income, for each one of the female helpers would be at Rs.1,500/-. Therefore, the liability of the insurance company cannot be extended beyond Rs.1,500/- per month. The Commissioner of Labour for Workmen Compensation has rightly arrived at a finding that the insurance company is liable to pay a sum of Rs.1,58,843/- by calculating the compensation at the rate of Rs.1,500/- per month. The Commissioner had further arrived at a finding that the balance compensation is Rs.5,89,717/-. However, the Commissioner has erred in passing an award that the balance of amount should also be paid by the Insurance Company and thereafter, they can recover from the employer.

13.There is a statutory provision under the Motor Vehicles Act enabling the insurance company to satisfy the award and recover the same from the owner of the vehicle in cases of breach of policy condition. However, no such parimateria provision is available under the Workmen Compensation Act. That apart, as per the judgement of the Hon'ble Supreme Court, the Insurance Companies were permitted to recover the said amount by filing an execution proceedings in the same MCOP. However, there is no such provision for filing the execution proceedings before the Workmen Compensation Commissioner. In such view of the matter, the Workmen Compensation Commissioner has no power to order pay and recovery especially when the group insurance is covered by a special contract between the parties. This is a policy based upon a contract and it is optional for the employer to enter into such a policy. Therefore, the judgement of the Hon'ble Supreme Court or the statutory provision under the Motor Vehicles Act cannot be invoked while the individual is functioning as a commissioner in the Workmen Compensation Act.

14.Therefore, the award of the commissioner directing the insurance company to pay a sum of Rs.5,89,717/- to the claimants and to recover the same from the employer is not sustainable and it is hereby set aside. The award as against the appellant/insurance company insofar as a sum of Rs.1,58,843/- is concerned, is confirmed and as far as the balance amount of Rs.5,89,717/- is concerned, the employer is liable to pay the amount to the claimants.

15.With the above said modification, the appeal is allowed to the extent as stated above. The balance amount of Rs.58,843/- shall be paid by the insurance company with interest from the date of claim petition. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

Index : Yes/No
Internet : Yes/No
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To
1. The Commissioner
Workmen Compensation,
Madurai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.464 of 2017
and CMP(MD).No.4983 of 2017

24.03.2023