IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **K. RAJASEKAR**

C.M.A.No.2842 of 2021
and
C.M.P.No.16347 of 2021

United India Insurance Company Limited,
Divisional Office,
No.2, Dr.Sankaran Salai,
Namakkal District. ... Appellant

Vs.

1.Kaliyammal
2.Palanisamy … Respondents

Memorandum of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award of the Commissioner for Employee's Compensation, Coonoor dated 19.04.2021 made in E.C.No.82 of 2018.

For Appellant	:	Mr.D.Bhaskaran
For R1	:	M/s.K.T.S.Sivakumar
For R2	:	No appearance

JUDGMENT

This Civil Miscellaneous Petition has been filed by the Insurance Company challenging the award passed by the Labour Commissioner in E.C.No.82 of 2018 dated 19.04.2021, directing the Insurance Company to indemnify the first respondent employer for the compensation awarded in favour of the employee herein.

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

3. The brief case of the claimant/mother of the employee that her son namely Jeyasakthi @ Sakthivel was employed under the second respondent as a cleaner of the Rig Unit lorry bearing Registration No.TN-27-S-9717. During the course of his employment, he sustained grievous injuries at Palka Town within the jurisdiction of Mahoba Police Station on 15.12.2006. He was earning Rs.6,000/- per month as a cleaner and vehicle was insured by the Appellant/Insurance Company. He has come forward seeking compensation under Workmen Compensation Act for a sum of Rs.5,00,000/- with interest. The second respondent employer was remained ex-parte.

4. The Appellant/Insurance Company has filed a counter and disputed between the employer-employee relationship. Further, they have also disputed that there is no coverage for the cleaner of the Insurance Policy.

5. After considering the evidence placed on record, the Labour Commissioner has held that the deceased namely Jeyasakthi @ Sakthivel was an employee of the second respondent and he was died during the course of his employment. It is further held that the Insurance Company is liable to pay the compensation to the claimant herein.

6. Aggrieved over the directions of the Labour Commissioner to indemnify the second respondent and to pay the compensation to the claimant herein, the Insurance Company has filed this appeal.

7. The learned counsel for the Insurance Company submitted that there was no policy coverage for the cleaner and even though the deceased herein was an employee to the second respondent. In the absence of any

coverage for the cleaner, the Insurance Company is not liable to pay compensation. By relying on the Judgment of this Court in ***Royal Sundaram Allianze Insurance Company Limited Vs. A.Pappathi and others 2011 ACJ 557.*** The Labour Commissioner has awarded compensation and the said Judgment is not applicable to the case of the claimant herein.

8. The substantial question of law raised herein are as follows:-

1. Whether the Labour Commissioner is right in holding that even though there was no premium paid to the helper, the Insurance Company is liable to indemnify the second respondent employer, to pay employee compensation.

2. Whether the Labour Commissioner is right in holding that the Insurer is liable to pay compensation as per the statutory liability under contract of insurance while awarding compensation under the Employees Compensation Act.

9. The contract of Insurance policy has entered between the respondents as per **"Miscellaneous and Special type of vehicles package policy"** and in the schedule of premium, the third party coverage and compulsory Provident Fund for the owner and the driver alone are covered

by paying premium. There was no other coverage for the death or bodily injury caused to any other person.

10. The Labour Commissioner by relying on Judgment of this Court passed in ***Royan Sundaran @ Insurance Company Vs. A.Pappathi and others reported in 2011 ACJ 557*** has held that in case of package policy, the occupant of the car has suffered death or of bodily injury, the Insurance Company is liable to pay compensation as per the statutory liability under Section 149 of the Motor Vehicles Act.

11. As far as the Employees Compensation is concerned, Section 149 is not applicable, since the compensation shall be payable under the Employee's Compensation Act 1923 for the injuries arising out of and during the course of his employment under Section 3 of the Act. Section 149 of Motor Vehicles Act states that the liabilities on the insurance company to pay compensation to the reasons enumerated under Section 147 of Motor Vehicle Act.

12. In this case, there was a contract between the respondents and the

insurance company, to cover the risk of death or bodily injury to the third parties and the personal coverage for the owner-cum-driver. There is no coverage for any employee.

13. As far as the employees, who are not covered under the insurance policy, the insurance company is not liable to pay the compensation by indemnifying the employer. In this case as per the insurance policy, the premium for the workmen was not paid, and the insurance company is not liable to indemnify the insurer. This Court is of the view that the Labour Commissioner has extended the policy coverage to the cleaner of the vehicle and held that there is evidence recorded to prove the employer-employee relationship.

14. He further held that the deceased was died in the accident arising out of his employment and in the course of his employment. As per Section 3 of the Employees Compensation Act, the employer is liable to pay compensation, for the injury or death caused to the employees. Since there is no coverage for the employee or any contract between employer and insurance company, directing the insurance company to pay compensation to

the deceased herein is not sustainable and same is hereby set aside.

15. With the above observations, this Civil Miscellaneous Appeal is allowed. Accordingly, the first respondent is directed to deposit the compensation quantified by the Labour Commissioner along with 12% interest from the date of accident till the date of realization, excluding the default period, if any within a period of six weeks from the date of receipt of this Order. The insurance company is permitted to withdraw the deposited compensation amount along with interest and cost, if any. In other aspects, the award of the Tribunal shall stand confirmed. No cost. Consequently, connected miscellaneous petition stands closed.

06.02.2024

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

K. RAJASEKAR, J.

rjr

To:

1.The Commissioner for Employee's Compensation,
Coonoor.

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

C.M.A.No.2842 of 2021
and
C.M.P.No.16347 of 2021

06.02.2024