IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2982 of 2021

The National Insurance Company Limited,
Divisional Office No.II,
Coimbatore. ... Appellant

Vs.

1.T.R.Rajan

2.The Management,
Mango Range Tea factory,
Parry Agro Industries Limited,
Pandalur, Nilgris District. … Respondents

Memorandum of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 aggrieved by the order of the Commissioner for Employee's Compensation, Coonoor passed in E.C.No.03 of 2007 dated 15.03.2021.

For Appellant	:	Mr.Nageswaran and Narichania
For R1	:	Mr.V.Sivakumar
For R2	:	Mr.T.S.Gopalan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the liability fixed on them to indemnify the first respondent/employer to pay compensation awarded in W.C.No.03 of 2007 dated 15.03.2021.

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

3. The brief case of the claimant herein is that on 03.02.2005 at about 1.15 a.m., the employee namely T.R.Rajan was sustained grievous injury arising out of and during the course of his employment. After treatment, he has come forward with the claim petition seeking compensation of Rs.5,00,000/- under the Workmen's Compensation Act. The employer has filed a counter and admitted that the workman has sustained bodily injury during the course of his employment. He has also stated that since there is Insurance coverage for the employee concerned, the second respondent is liable to indemnify the employer.

4. The appellant/Insurance Company filed a counter disputing the manner in which the accident has taken place and also disputed the age, disability sustained by the claimant and the quantum of compensation. The Labour Commissioner after considering the evidence placed on record has held that the first respondent / claimant has sustained injuries during the course of his employment. Hence, he is entitled for compensation from his employer.

5. It is further held that the Appellant/Insurance Company is liable to pay compensation on behalf of the employer and quantified the compensation for the payment of Rs.26,605/- by the first respondent and Rs.1,26,389/- by the second respondent/Insurance company along with interest at the rate of 12% per annum from the date of accident till the date of realisation.

6. Aggrieved over the same, the liability fixed on the Insurance company and to indemnify the first respondent, the Insurance Company has filed this appeal by raising substantial questions of law that whether under miscellaneous policy, the Insurance Company is not liable to pay

compensation with regard to interest and medical expenses ?

7. The learned counsel for the workmen/claimant submitted that even though the policy has entered as miscellaneous policy, there is no exclusion class to dispense the payment of interest and medical expenses by the Insurance Company. In the absence of any contract to that effect, the Insurance Company is liable to pay the compensation and also the interest to the compensation, quantified by the Labour Commissioner.

8. I have carefully considered the submissions made by both sides and perused the materials available on record.

9. The question of law arises for consideration is,

1. Whether the Labour Commissioner of Workmen Compensation is right in helding that the compensation along with the interest has to be paid by the Insurance Company or not ?

2. Whether under Miscellaneous Policy, Insurance Company is not liable to pay interest under Employees Compensation Act ?

10. The question of law raised herein, is no longer *res integra* and Hon'ble Apex Court, in ***P.J. Narayan vs. Union of India and ors. [2004 ACJ 452]***, held that the insurance company is not liable to pay any interest for the compensation awarded since liability to indemnify the insured under Workmen Compensation Act is based on the contract between the Insurance Company and the insured. It is also held that in the miscellaneous policy, the Insurance company is not liable to pay the interest, since there was a separate exclusion clause between the employer and the Insurance company.

11. In this case, the Insurance policy Ex.R6 shows that, there is no exclusion clause exempting the Insurance company from paying the interest. This appeal has been filed on wrong notion that there was no contract between the employer and the Insurance Company exempting the Insurance Company from paying the interest on the award, costs for the insurer or bodily injury or death cost to the employer. This Court is of the view that since there was no contract between the Insurance Company and the employer, for exempting the payment of interest, the Insurance Company is liable to pay the interest.

12. Accordingly, this civil miscellaneous appeal filed by the Insurance Company stands dismissed. Consequently, connected miscellaneous petition stands closed. No cost.

06.02.2024

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

K. RAJASEKAR, J.

rjr

To:

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

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

C.M.A.No.2982 of 2021

06.02.2024