BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.978 of 2013

The Divisional Manager,
Divisional Office,
National Insurance Company Limited,
3, North Veli Street,
Madurai – 625 001. ... Appellant/2nd Respondent

-vs-

1. K.Murugan ... 1st Respondent/Petitioner
2. T.K.Kuttiyappan ... 2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, against the award passed in W.C.No.8 of 2005, dated 26.02.2009 on the file of the Workmen's Compensation Commissioner, Madurai.

For Appellant : Mr.D.Sivaraman
For Respondents : Mr.P.Thiagarajan – for R1
: No appearance – for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in in W.C.No.8 of 2005, dated 26.02.2009 on the file of the Workmen's Compensation Commissioner, Madurai, wherein, the first respondent herein has filed the claim petition and the same was allowed by directing the appellant/second respondent to pay a sum of Rs.1,83,265/- (Rupees One Lakh Eighty Three Thousand Two Hundred and Sixty Five only) along with interest at the rate of 12% p.a from the date of accident till the date of deposit. As against the order passed by the Tribunal, the Insurance Company/2nd respondent has preferred the appeal.

2. The brief facts of the averments made in the petition before the Tribunal are as follows:

The petitioner was working as labour in the first respondent vehicle bearing Registration No.TN-D-2095. The said vehicle was used for drilling purpose with air compressor. The petitioner was working as helper in the Tractor. The Tractor was insured with the second respondent/Insurance Company. On 14.04.2004, at about 09.30 hours, when the Tractor was engaged for drilling work, there was an accident due to the explosives and thereby, he was thrown away and sustained multiple grievous injuries (i.e) fracture of left side Cheek, nose and forearm, loss of left eye and he loss of hearing in left ear and also he sustained fracture injuries. He was admitted in the hospital and took treatment as an inpatient from 14.04.2004 to 12.05.2004 and again was admitted on 24.06.2004 and took treatment till 22.07.2004 as an inpatient. Due to his injuries, he was unalbe to do his work and loss his earning capacity. At the time of accident, he was aged about 34 years and he was working under the first respondent and earning a sum of Rs.4,000/- per month. Therefore, both the respondents are liable to pay the compensation to the petitioner.

3. The brief averments in the counter filed by the second respondent are as follows:

The averments made in the petition are denied as false. The averments made in the petition that the petitioner was working under the first respondent and he sustained injuries on the date of occurrence, are all denied. The age, income and occupation of the petitioner are all denied. There is no coverage for the helper and the Tractor has only seating capacity of one and thereby, it covers only for the driver and helper were not permitted and thereby, they are not liable to pay any compensation to the petitioner. Moreover, the accident had not occurred due to the use of vehicle and there is no nexus between the accident and the vehicle and thereby, the petition is liable to be dismissed.

4. Before the Tribunal, on the side of the petitioner, he was examined P.W.1 and also examined Doctor as P.W.2 and marked documents Ex.P.1 to Ex.P.11. On the side of the respondents, R.W.1 was examined and no documents were marked and also marked Ex.C.1.

5. After hearing both sides and perusing the records, the Tribunal has awarded a sum of Rs.1,83,265/- (Rupees One Lakh Eighty Three Thousand Two Hundred and Sixty Five only) towards compensation along with interest at the rate of 12% p.a and directed the second respondent/ Insurance Company to pay the amount to the petitioner within 30 days.

6. Aggrieved over the above said order, the present appeal has been preferred by the second respondent/Insurance Company on various grounds including following substantial question of law:

> “(a) Whether the insurer can be held liable to compensate the claimant who was not covered under the terms of the policy?
>
> (b). Is not the finding of the learned Workmen Compensation Commissioner, Madurai, regarding the coverage of the claimant under IMT No.17 perverse to his own finding that the claimant was only a helper which category is not covered under IMT No.17?
>
> (c). Whether the learned Workmen's Compensation Commissioner, Madurai is correct in directing the Appellant/Insurance Company to pay interest on the award, from the date of the accident, which is in contradiction to Section 4-A(3) of the Workmen's Compensation Act?”.

7. In this context, the learned counsel appearing for the appellant would contend that the vehicle involved in the accident was insured with the appellant/second respondent, but, the policy had not covered for the helper and the accident had not occurred while using the Motor Vehicle. The policy

only covered for the Motor Accident and not covered for the Workmen's Compensation. Therefore, the appellant/second respondent is in no way liable to pay compensation to the petitioner. Further the claimant was only a helper and there is no separate policy for the helper, but the Tribunal erroneously held that the policy covered the helper under IMT No.17. Therefore, the order passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the respondents would contend that the Tractor was insured with the second respondent and in the R.C.Book, purpose of using the vehicle is also clearly mentioned and from the operation of the vehicle only, the compressor will operate and thereby, the respondent Company after knowing the nature and purpose and use of vehicle, issued the policy and thereby, the policy covered the helper. Further, as per IMT No.17, the helper is also covered. Once the cleaner is covered, the term helper, cleaner is not defined in the Act. Therefore, the nature of work is helper. Therefore, the policy covered for the helper. Therefore, the Tribunal after considering the all the aspects correctly awarded compensation and the present appeal is liable to be dismissed.

9. This Court, after hearing the learned counsel appearing on either side and perusing the records, frames the following substantial question of law:

> (a) Whether the insurer can be held liable to compensate the claimant who was not covered under the terms of the policy?
>
> (b) Is not the finding of the learned Workmen Compensation Commissioner, Madurai, regarding the coverage of the claimant under IMT No.17 perverse to his own finding that the claimant was only a helper which category is not covered under IMT No.17?

10. **Substantial Question of Law : (a)** In this case, it is admitted that there is no dispute that the petitioner was working under the first respondent's vehicle as helper and the vehicle was insured on the date of accident.

11. The appellant/second respondent disputed his liability on the ground that the vehicle was insured with the second respondent and the accident had not taken place arising out of Motor vehicle and the Motor

vehicle was only used for the purpose of road accident and not otherwise. Therefore, the second respondent is not liable to pay any compensation.

12. According to the appellant, the vehicle was insured with the second respondent/ Insurance Company, but the insurance policy had not covered the helpers and the policy only covered for the road accident and not for other purposes.

13. But, on perusal of the records, it seen that the vehicle insured is special type and in the R.C.Book also, the purpose of use of vehicle was mentioned and thereby, the vehicle was insured as special type of vehicle.

14. The accident took place at the time of using the vehicle and when the driller was operating and thereby, the Insurance Company is liable to pay the compensation to the petitioner.

15. The learned counsel appearing for the appellant has relied upon the following judgments:

1. ***2010 (2) TN MAC 554 (The Divisional Manager, United India***

Insurance Company Limited Vs. K.Pavayee and another)

2. (2010) 10 SCC 536 (Mamtaj Bi Bapusab Nadaf and others Vs.United India Insurance Company and others) .

3. C.M.A(MD) No.877 of 2016, judgment of this Court, dated 22.11.2017(The Branch Manater, United India Insurance Company Limited Vs. Chithiravel and two others).

16. On a careful perusal of the above said judgments, it is clear that for the accident arising out of and in the course of employment, the owner alone is liable and the liability under Section 147 of Motor Vehicle Act only includes driver. Even under Section 147 of the Motor Vehicles Act, a driver of the vehicle will be entitled to get compensated by the Insurance Company. Further, as per Section 3(1) of the Workmen Compensation Act, if any untoward incident had happened in the course of employment, the owner will be liable, but where there is a contract to cover such accident with the Insurance Company, then the Insurance Company can be held liable.

17. The learned counsel appearing for the first respondent has relied upon the judgment in ***2022 1 TNMAC – 145 (M/s.Mangilal Vishnoi vs.***

National Insurance Company limited) wherein, the Hon'ble Supreme Court held in Paragraph No.8 as follows:

> *"8. We have heard learned counsel for the parties and find that the High Court has accepted appeal on a make-believe argument that Cleaner or Helper engaged by the employer are engaged in two different duties and that a Helper is not covered by the insurance policy. The High Court has recorded a finding that admittedly deceased was a Helper. In the absence of any clear demarcation of duties of a Helper or a Cleaner and in view of the fact that Helper and Cleaner are interchangeably used, therefore, declining claim for the reason that deceased was engaged as a helper and not Cleaner is wholly unjustified. Additionally, the employer sought indemnification of five other employees engaged in loading or unloading activities by paying extra premium. It was for the insurance company to cross examine the witnesses produced by the claimant or by the owner to prove the fact that deceased was not engaged in loading or unloading activities. We find that the High Court has drawn a distinction*

between Helper and a Cleaner when none existed.”

18. On careful perusal of the judgment, it is clear that in the absence of any clear demarcation of duties of a Helper or a Cleaner and in view of the fact that Helper and Cleaner are interchangeably used, declining claim for the reason that deceased was engaged as a helper and not Cleaner is wholly unjustified. In the case on hand, the purpose of vehicle is mentioned and the policy also issued as special type of vehicle and therefore, the policy is covered.

19. Further, in this context, the respondents' side evidence witness also admitted that at the time of issuing policy, they inspected the vehicle and in the RC Book itself, the purpose and use is also clearly mentioned and also admitted that the first respondent is permitted to use the explosive substances and the policy also mentioned in the Miscellaneous and the special type of vehicle policy -A liability only. Therefore, the policy is covered for the petitioner. Thus the substantial question of law is answered.

20. **Substantial Question of Law (b):** Further, the respondents side witness in his cross examination stated that the premium was collected as per Regulation of IMT No.17. IMT No.17 refers to personal accident covered to paid Drivers, Cleaners and Conductors. In this case, the petitioner was working as helper. As already discussed in the previous para that as per the Supreme Court Judgment, since there is no duties demarcated for the helpers and cleaners in this vehicle, the helper includes the cleaners and thereby, the appellant/second respondent is liable to pay the amount and there is no infirmity or perversity found in the order passed by the Tribunal. Thus, the substantial question of law (b) is answered.

21. In view of the answer made for the substantial questions of law, there is no merit in the present Civil Miscellaneous Appeal and the same is liable to be dismissed.

22. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs.

15.02.2024

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

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

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