



CMA(MD).No.366 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.07.2024

PRONOUNCED ON : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.366 of 2019
and CMP(MD).No.4515 of 2019

The New India Assurance Co.Ltd.,
Represented through its Branch Manager
Regional Office
CMTS Bhavan Building
70 Feet Road
Ellis Nagar, Madurai

.....Appellant/3rd Respondent

Vs.

1.Sivanantha Perumal (died)

..1st respondent/1st respondent

2.The Management
M/s.Threekay Construction Limited
5/381, 2nd Street
Shanthi Nagar
Athimarapatti Road
Muthiahpuram
Thoothukudi District 628 005

...2nd respondent/4th respondent

3.The Management
M/s.RS File Foundation
C/.Additional Ammonia Importation Terminal (SPIC)
Plot No.5H, Redgate
VOC Port Trust
Thoothukudi District

...3rd respondent/ 3rd party



CMA(MD).No.366 of 2019

4.The Management
M/s.Green Star Fertilizers Limited
SPIC Nagar
Thoothukudi 628 005

...4th respondent/2nd respondent

5.The Deputy Director
Industrial Security and Health (BOCW)
Perumalpuram
Tirunelveli District

...5th respondent/1st respondent

6.Kaliammal

...6th respondent/----

(6th respondent/L.R of the deceased R1 is
impleaed vide Court order dated 11.06.2024)

PRAYER: Civil Miscellaneous Appeal filed under Section 30(10) of Workmen Compensation Act, 1923, to direct the Deputy Commissioner of Labour, Tirunelveli not to disburse the deposited amount towards the order of the Deputy Commissioner of Labour, Tirunelveli dated 20.12.2018 in DCL.Order No.Aa1/2823/2018 till the disposal of this appeal.

For Appellant : Mr.A.Ilango

For Respondents : Mr.R.Gandhi
Senior Counsel
for Mr.J.Karthikeyan for R2

: Mr.C.Karthikeyan for R4

: No appearance for R3, R5 & R6

J U D G M E N T

The present appeal has been filed by the insurance company challenging the award passed by the Deputy Commissioner of Labour, Tirunelveli in DCL Order No.Aa1/2823/2018.



(A)Factual Matrix:

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2.The Tuticorin Port Trust has called for a tender for construction of Ammonia Storage Tank and the contract was awarded to the second respondent in the appeal. The work was commenced on 14.03.2018. For the purpose of pile foundation work, the second respondent in the appeal had given a sub-contract to the third respondent in the appeal.

3.On 15.03.2018, when 8 employees belonging to the sub-contractor were undertaking the work of pile foundation, the victim namely Mariappan got electrocuted and passed away. The Management had informed the Deputy Director of Industrial Security and in turn, it was placed before the Deputy Commissioner of Labour for payment of compensation.

4.The insurance company had filed a counter contending that the second respondent in the appeal namely M/s.Threekay Construction Limited has taken the insurance policy for various categories on 15.03.2018 at about 3.41 p.m. However, the victim was not working with M/s.Threekay Construction Limited. The victim was employed under the third respondent namely M/s.R.S.Pile Foundation Construction Company who are the sub-contractors of M/s.Threekay Construction Limited. It was further contended that the accident is said to have taken place at 4.00 p.m immediately after the policy was taken. Therefore, the accident is doubtful. It was further contended that the victim was not the employee of their insured



and therefore, they are not liable to indemnify their insured company.

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5.The Deputy Commissioner of Labour after considering the evidence on either side, arrived at a finding that even though a policy was taken by the contractor namely M/s.Threekay Construction Limited, the same would cover the employees of the sub-contractors also. The Commissioner proceeded to fix the compensation of Rs.8,11,640/-. Challenging the said award, the present appeal has been filed by the insurance company.

6.The following substantial questions of law have been raised in the appeal for consideration.

(i)Whether there is a employer and employee relationship between the deceased employee and the second respondent to whom the policy issued by the appellant herein or not?

(ii)Whether there is privity of contract between the appellant herein and the 3rd respondent herein or not?

(iii)Whether there is a violation of policy condition by the 2nd and 3rd respondents mandating the provision of reasonable precaution to prevent the accident or not?

(iv)Whether there is a specific exclusion in the policy excluding the insured's liability to the employees of their contractors or not?

(B) Contention of the counsels appearing on either side:

7.The learned counsel appearing for the appellant, relying upon the Workmen Compensation Insurance Policy, contended that the policy



CMA(MD).No.366 of 2019

specifically excludes the liability of the insurer to the employees of their contractors. Therefore, according to the learned counsel for the appellant, the policy covers only if the injured or the deceased person is an employee of M/s.Threekay Construction Limited.

8.Admittedly in the present case, the deceased person is not an employee of M/s.Threekay Construction Limited, but an employee of their sub-contractor namely M/s.R.S.Pile Foundation Company. There is no privity of contract between M/s.R.S.Pile Foundation Company and the Insurance Company. Therefore, the Insurance Company is not legally liable to indemnify the insured.

9.The learned counsel for the appellant had further contended that the second and third respondents have not properly maintained the electrical equipment in order to prevent the accident. As per the policy condition, the insured has to take reasonable precaution to prevent the accident. Since the said condition has been violated, they are not liable to indemnify the M/s.Threekay Construction Limited.

10.The learned counsel had further stated that the Workmen Compensation Policy is not a statutorily mandated contract, but an optional one. Therefore, the clause/condition and exclusion in the said contract have to be strictly construed. In case of any ambiguity, the clause /condition should be interpreted only in favour of the insurer.



11.The learned counsel for the appellant had further contended that at the time of taking Workmen Compensation Policy, M/s.Threekay Construction Limited has not disclosed that they are going to engage a sub-contractor. Therefore, there is a non-disclosure of material facts which would result in exonerating the insurance company from indemnifying the insured company. As per Section 12(2) of Workmen's Compensation Act, the contractor is the principal employer and therefore, he has to satisfy the award and thereafter, collect the same from his sub-contractor based upon the agreement between them. However, in view of the exclusion clause found in the policy, the insurance company is not liable to indemnify M/s.Threekay Construction Limited. Hence, he prayed for exonerating the insurance company from the liability.

12.Per contra, the learned senior counsel appearing for the respondent/claimant had contended that a tender was called for the purpose of construction of Ammonia Storage Tank for SPIC within the premises of the Port trust. M/s.Threekay Construction Limited was the successful tenderer and he had engaged M/s.R.S.Pile Foundation Company for pile foundation work. The victim was engaged as an employee by M/s.R.S.Pile Foundation and while undertaking the work, he got electrocuted and passed away. In the present case, M/s.Threekay Construction Limited should be construed to be the principal employer vis-a-vis M/s.R.S.Pile Foundation. When the principal



CMA(MD).No.366 of 2019

employer has taken a workmen compensation policy, the award of Deputy Commissioner of Labour has to be satisfied by the insurance company. The learned senior counsel had further contended that such an exclusion clause found in the workmen compensation policy is in violation of Section 17 of the Workmen's Compensation Act. Therefore, the said clause cannot be pressed into service by the insurance company. Hence, he prayed for sustaining the award passed by the Commissioner under the Workmen's Compensation Act.

13.The learned senior counsel had relied upon the following judgements:

(a) The judgment of the High Court of Karnataka at Bengaluru in Miscellaneous First Appeal No.4324 of 2013 (WC) (Smt.Unnamalai Vs. The Proprietor, M/s.Mavinakodige Estate, Thotaur Village, Chikmagalur District and another) dated 23.09.2022.

(b) 2004 2 SCC 694 (United India Insurance Co.Ltd., Vs. M/.Pushpalaya Printers)

(c) The judgment of the High Court of Gujarat at Ahmedabad in First Appeal No.2309 of 2018 (Iffco Tokio General Insurance Company Ltd., Vs. Jyotiben Rajeshbhai Kanjiya) dated 08.01.2019;

to impress upon the Court that the insurance policy taken by the main contractor would cover the employees of the sub-contractor also. Hence, he



prayed for sustaining the award passed by the Commissioner under the Employees Compensation Act.

14.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

15.Section 12 of Employee's Compensation Act, 1923 is extracted as follows:

“12. Contracting.— ?

(1)Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2)Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor , or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a



principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a an employee from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere that on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

16.A perusal of Subsection 1 of Section 12 of Employee's Compensation Act, 1923 reveals that where any person enters into a contract with another person for execution of whole or any part of the work, then the principal shall be liable to pay compensation with regard to an employee employed by the contractor also.

17.A perusal of Sub-Section 2 of Section 12 reveals that on such payment by the principal as contemplated under Section 12(1) of Employee's Compensation Act, 1923, the principal would be entitled to be indemnified by his contractor. It further reveals that where a contractor himself is the principal, he is liable to pay the compensation and he will be entitled to be indemnified by any person standing to him in relation to a contractor.



CMA(MD).No.366 of 2019

Therefore, it is clear that where a contractor engages a sub-contractor for execution of any work, then the contractor should be treated as a principal employer vis-a-vis his sub-contractor. If an employee of a sub-contractor dies or gets injured in the course of employment or arising out of employment, then the contractor who is the principal employer of the sub-contractor is liable to pay the compensation and he is entitled to get it indemnified by the sub-contractor.

18. In the present case, admittedly the deceased was working as an employee under the sub-contractor namely M/s.R.S.Pile Foundation. As far as M/s.R.S.Pile Foundation is concerned, their principal employer is M/s.Threekay Construction Limited who have taken the Employee's Compensation Policy from the appellant/insurance company. Under the Act, M/s.Threekay Construction Limited is liable to satisfy the award being a principal employer vis-a-vis M/s.R.S.Pile Foundation Company Limited.

19. It is the specific contention of the insurance company that they are liable to indemnify the M/s.Threekay Construction Limited only if an employee of an M/s.Threekay Construction Limited is injured or dies in an accident. The indemnification under the contract of insurance arises when a liability is upon the insured person to pay or meet out a particular compensation. In the present case, there is a statutory obligation upon M/s.Threekay Construction Limited to satisfy the award. Merely because the



CMA(MD).No.366 of 2019

insured had sub-contracted the work to M/s.R.S.Pile Foundation, the insurance company cannot contend that they are not liable to indemnify the principal employer. The exclusion clause found in the insurance policy is clearly in violation of Section 12 of Employee's Compensation Act, 1923 which mandates that the principal employer is liable to pay compensation. In order to meet out this exigency, an Employee's Compensation Policy has been taken by M/s.Threekay Construction Limited. It will be hyper-technical on the part of the insurer to contend that the coverage of the policy is restricted to the employees of the contractor and not the employees of his sub-contractor. This argument ignores the fact that the contractor is the principal employer vis-a-vis the sub-contractor.

20.It is optional for a contractor to take a Workmen Compensation Policy covering their employees. But once a policy is taken, thereafter the insurance company cannot contend that the coverage is limited to the employees of the contractor alone and does not cover the employees of the sub-contractor. Relying upon any exclusion clause to the said effect would be in clear violation of the statutory provision of Section 12 of Employee's Compensation Act.

21.The main object of Section 12 of Workmen's Compensation Act, 1923 is to protect the workmen and to secure compensation for him. Whether



an employee works under the sub-contractor or the main contractor does not make a difference as far as an employee is concerned. After a Workmen Compensation Policy is taken, then it is governed by the provisions of Employee's Compensation Act, 1923 and any exclusion clause inserted in the policy in violation of provisions of Employee's Compensation Act cannot prevail.

22.The Hon'ble Supreme Court in a judgment reported in *(2023) 1 SCC 428 (Texco Marketing Private Limited Vs. Tata Aig General Insurance Company Limited and others)* in paragraph Nos.10 to 13 has held as follows:

10. Adhesion contracts are otherwise called Standard-Form Contracts. Contracts of Insurance are one such category of contracts. These contracts are prepared by the insurer having a standard format upon which a consumer is made to sign. He has very little option or choice to negotiate the terms of the contract, except to sign on the dotted lines. The insurer who, being the dominant party dictates its own terms, leaving it upon the consumer, either to take it or leave it. Such contracts are obviously one sided, grossly in favour of the insurer due to the weak bargaining power of the consumer.

11.The concept of freedom of contract loses some significance in a contract of insurance. Such contracts demand a very high degree of prudence, good faith, disclosure and



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notice on the part of the insurer, being different facets of the doctrine of fairness. Though, a contract of insurance is a voluntary act on the part of the consumer, the obvious intendment is to cover any contingency that might happen in future. A premium is paid obviously for that purpose, as there is a legitimate expectation of reimbursement when an act of God happens. Therefore, an insurer is expected to keep that objective in mind, and that too from the point of view of the consumer, to cover the risk, as against a plausible repudiation.

Exclusion Clause

12. An exclusion clause in a contract of insurance has to be interpreted differently. Not only the onus but also the burden lies with the insurer when reliance is made on such a clause. This is for the reason that insurance contracts are special contracts premised on the notion of good faith. It is not a leverage or a safeguard for the insurer, but is meant to be pressed into service on a contingency, being a contract of speculation. An insurance contract by its very nature mandates disclosure of all material facts by both parties.

13. An exclusion clause has to be understood on the touchstone of the doctrine of reading down in the light of the underlining object and intendment of the contract. It can never be understood to mean to be in conflict with the main purpose for which the contract is entered. A party, who relies upon it, shall not be the one who committed an act of fraud, coercion or mis-representation particularly when the contract along with



CMA(MD).No.366 of 2019

the exclusion clause is introduced by it. Such a clause has to be understood on the prism of the main contract.....”

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23.A careful perusal of the judgment of the Hon'ble Supreme Court would indicate that though taking of an insurance policy is a voluntary act, it is intended to cover any contingency that might happen in future. The premium is paid with a legitimate expectation of reimbursement when an Act of God happens. It is further clear that the burden is upon the insurer to prove that the exclusion clause comes into operation on the facts and circumstances of the case. The exclusion clause has to be understood in the light of the underlining object and intendment of the contract. We can never interpret an exclusion clause in a contract of insurance so that it will be in conflict with the main purpose for which the contract was entered into.

24.In the present case, M/s.Threekay Construction Limited have entered into a contract of insurance only for the purpose of getting themselves indemnified, in case any liability arises under the Workmen's Compensation Act due to the death or injury sustained by any one of the employees in the work spot. Therefore, the clause which excludes the employees of sub-contractor cannot be understood or interpreted in such a manner that goes against the main purpose of the contract, namely, to provide compensation to the injured/deceased employees irrespective of the fact



CMA(MD).No.366 of 2019

whether they are directly employed by the contractor or through the sub-contractor. Otherwise an employee under the sub-contractor would get excluded and he will not be in a position to receive the compensation.

25. In such circumstances, this Court is of the opinion that when the Act mandates the principal employer to satisfy the award for the injuries sustained by the employee of a contractor, the contention that there is no privity of contract pales into insignificance. Even without privity of contract, the Act has mandated the principal employer/contractor to satisfy the award passed for compensation towards injuries or death of an employee of sub-contractor. The insurance policy has been taken only to get indemnified when a liability arises under Employee's Compensation Act. Therefore, the contention that there is no privity of contract between the sub-contractor and the insurance company is not legally sustainable.

26. Though it is contended on the side of the insurance company that the electrical equipment have not been properly maintained which is one of the conditions under the policy, no evidence has been let in on the side of the Company to establish the same.



CMA(MD).No.366 of 2019

27. In view of the above said deliberations, all the substantial questions of law are answered as against the appellant and this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Deputy Commissioner of Labour, Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).No.366 of 2019

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.366 of 2019
and CMP(MD).No.4515 of 2019

29.07.2024