Madras High Court
The Branch Manager vs Vellaiyan Alias Kunjan on 20 March, 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20/03/2006

CORAM:
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

C.M.A.No.986 of 2005

The Branch Manager,
National Insurance Company Limited,
Chetty Street,
Tiruchencode. ... Appellant

Vs

1.Vellaiyan alias Kunjan
2.Pappathi
3.Vinganamoorthy ... Respondents

Prayer

Appeal filed under Section 30 of Workmen's Compensation act, 1923, against the order dated 01.03.2005 passed in W.C.No.474 of 2003 by the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Tiruchirappalli.

!For Appellant ... Mr.S.Ramachandran

^For Respondents ... Mr.R.Mathialagan

:JUDGMENT

This appeal has been preferred against the award of compensation passed in W.C.No.474 of 2003 on the file of the Deputy Commissioner for Labour, under Workmen's Compensation Act, Tiruchirappalli.

The Short facts of the case are as follows:

2. The deceased Kamaraj @ Sakthivel was working under the respondent as an employee in his bore well lorry. On 06.09.2003, while he was fixing the rod in the bed, the rod touched the live wire, resulting the death of Kamaraj @ Sakthivel, due to an electrocution. At the time of the accident, the deceased was drawing a sum of Rs.4,500/- towards his monthly salary. The first respondent had insured the vehicle which involved in the accident with the second respondent / National Insurance Company. The claimants are the parents of the deceased Kamaraj. They have claimed Rs.6 lakhs towards compensation.

3. The first respondent remained ex-parte. The second respondent in his counter has contended that the vehicle was not insured under the second respondent. The driver of the vehicle had no valid driving licence to drive the lorry which involved in the accident and that the deceased Kamaraj was not an employee under the first respondent and that the accident had not occurred during the course of the employment. In the additional counter, the second respondent has contended that as per the terms of the policy, the second respondent is not bound to indemnify the first respondent.

4. Before the learned Deputy Commissioner of Labour under Workmen's Compensation Act, P.W.1 was examined and Ex.P.1 to P.5 were marked on the side of the claimants. On the side of the respondent, R.W.1 was examined and Ex.R.1 was marked.

5. After going through the oral and documentary evidence, the learned Deputy Commissioner for Labour under Workmen's Compensation Act, had come to a conclusion that as per the terms of the policy, the second respondent is liable to pay the compensation to the claimants and fixed the compensation as Rs.3,25,147/-.

6. Aggrieved by the award of compensation, the second respondent had preferred this appeal.

7. Now, the substantial question of law to be decided in this appeal is whether under Ex.R.1, the second respondent is liable to indemnify the first respondent for the award amount?

The Point:

8. The learned Counsel for the appellant would contend that as per the terms of the policy, the appellant is not liable to pay compensation. But, the learned Counsel would admit that there is no I.M.T 37 attached to the terms of the policy. The learned Counsel for the appellant relying on the decision in National Insurance Co. Ltd., Salem Vs. Ayyadurai and another reported in 2004 (2) TN MAC 47, contended that the lorry which was insured with the second respondent had not involved

in any accident. But while fixing the shaft of the rod, it touched the live wire resulting the death of Kamaraj @ Sakthivel and hence, the learned Counsel for the appellant would contend that there is no coverage of policy indemnifying the insured / the appellant herein to pay compensation to the claimants. The facts of the case relied on by the learned Counsel for the appellant entirely differs from the facts of the present case, because in the said case, there was an exclusion clause in the policy, specifically providing, in case, the liability arisen out of its operation or its use for part of vehicle or attached to the vehicle was inducted in the policy itself. Whereas a perusal of Ex.R.1, the policy, would go to show that it specifically in this case covers them (W.C) to 7 employees. There is no exclusion clause provided under the policy as that of one in the decision cited above. So, the facts of the case in 2004 (2) TN MAC 47 is not applicable to the present facts of the case.

9. The learned Counsel for the respondent, per contra, relied on the decision in National Insurance Company Limited, Gobichettypalayam, Erode District Vs. Arumugham and others reported in 2006 (1) TLNJ (Civil) 340. The facts of the case are similar to the facts of the present case. In the said case, a helper, who was working in a rig unit lorry, died during the course of his employment. On 16.09.1996, when the rig unit was in operation, the deceased got electrocuted and died while in the course of his employment. Since, the lorry along with rig unit was covered under Ex.P.4, policy, wherein it was held by the learned Single Judge of this Court that the Insurance Company is liable to pay compensation to the parents of the deceased. A perusal of the award will go to show that the Deputy Commissioner for Labour has observed that E.M.T.37 - Tariff Advisory Committee, Bombay - India Motor Tariff, 01.08.1989 was attached to the policy, Ex.R.1. But, there is no connection between the said endorsement and the terms and conditions of the policy. Because, there was no exclusion clause, provided under the terms of the policy. Further, the policy specifically covers 7 employees only. Under such circumstances, the Deputy Commissioner for Labour under Workmen's Compensation Act, has come to a conclusion that the insured / the appellant, National Insurance Company Limited, is liable to indemnify the insurer, the first respondent. The learned Counsel for the appellant would contend that the accident had occurred in the year 2003 and as per the then prevailing R.B.I interest, he is liable to pay only 9% interest. The learned Counsel for the appellant also advanced an argument relying on the decision in P.J.Narayan Vs. Union of India and others reported in 2004 ACJ 452 to the effect that the Insurance Company is not liable to pay any interest. A perusal of the judgment of the Honourable Apex Court in 2004 ACJ 452 will go to show that if there is any contract between the insurer and the insured to the effect that the insured is liable to pay any interest, then as per the terms and conditions of the policy, the insured is not liable to pay any compensation. But, there is no specific provision inducted in the policy, Ex.R.1, excluding the interest clause. Under such circumstances, the Insurance Company is liable to pay 9% interest, in case if they fail to deposit the award amount within 30 days from today i.e, from the date of award.

10. Hence, I hold on the point that under Ex.R.1, policy, the second respondent / the appellant is liable to pay the award amount with 9% interest, after 30 days from today i.e, from the date of award. The point is answered accordingly.

11. In the result, the appeal is dismissed, confirming the award passed in W.C.No.474 of 2003 by the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Tiruchirappalli, except the liability of the appellant to pay 9% interest instead of 12% interest after 30 days from

today i.e, from the date of award. No costs.

rsb To The Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Tiruchirappalli.