

(2011) 02 MAD CK 0062

In the Madras High Court

Case No : C.M.A. No's. 2321 and 2322 of 2004

National Insurance Company Ltd.

APPELLANT

Vs

Palani Ammal and M. Senniappan

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0062

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : M. Vijayaraghavan, for the Appellant; Ma. P. Thangavel for R-1 in CMA 2321/2004 and K. Soundararajan for R-1 to R-3 in CMA 2322/2004, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—Both the appeals are filed by the Insurance Company. Since the claim arises out of the same accident, both the appeals

are taken up together and disposed of by way of this common judgment.

2. The case of the claimants is that the deceased were working in the lorry rig unit belonging to one Senniappan on a monthly wages of Rs. 4,500/-

. On 08.12.1999 at about 3.30 a.m., when they were working in a borewell, they were crushed to death by falling stones from above. On a

consideration of both oral and documentary evidence, the lower Court granted compensation of Rs. 2,21,370/- and Rs. 2,19,950/-. Challenging

its liability, the Appellant/Insurance Company has filed these appeals.

3. The learned Counsel for the Appellant would only contend that the insurance policy would cover the rig as well as the lorry only when the lorry

is in operation in the road. When the lorry is employed for digging a bore-well, it becomes only a tool and at that point of time, it is not on the road

nor is it moving and therefore, it cannot be construed as a transport vehicle and hence, motor accident claims petition will not lie as per the

provisions of Motor India Tariff Condition Nos. 37 and 47. Since Condition No. 47 contemplates that when the vehicle is used as a tool Insurance

Company will not be liable, as per the policy, they will not be entitled to pay the amount. The accident is admitted.

So is the relationship of employer employee. Liability alone is questioned on technical ground.

4. Old Condition No. 37 and New Condition 47 read as under:

Condition No. 37:

Mobile Cranes/Drilling Rigs.

It is hereby declared and agreed notwithstanding anything to the contrary contained in this policy that in respect of the Motor Vehicle the Company

shall be under no liability.

a) u/s I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming

part of such vehicle or attached thereto except or loss or damage arising directly from fire, explosion, self ignition or lightning or burglary,

housebreaking or theft.

b) u/s II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the Insured

arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

IMT.47. Mobile Cranes/Drilling Rigs/ Mobile Plants/ Excavators Navies/ Shovels/ Grabs/Rippers.

It is hereby declared and agreed notwithstanding anything to the contrary contained in this Policy that in respect of the vehicle insured the Insurer

shall be under no liability-

a) u/s I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming

part of such vehicle or attached thereto except for loss or damage arising directly from fire, explosion , self ignition or lightning or burglary

housebreaking or theft.

b) u/s II except so far as is necessary to meet the requirements of the Motor

Vehicles Act, 1988, in respect of liability incurred by the insured

arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

5. The learned Counsel for the Respondents would contend that Ex. A-3 - Insurance policy would indicate that there is no such exclusion

specifically mentioned in the policy. Unless and until a specific exclusion is made in the policy, the presumption is that the policy covers every

accident. Admittedly, both the lorry and the rig are insured. In such circumstances, once a death occurs due to an accident, automatically,

insurance cover comes into play. When the lower Court has adopted right multiplication factor, there is no need or necessity for considering the

appeal.

6. Heard both sides.

7. At the time of admission of the appeals, the following questions of law were framed:

1. Whether the lower Court has not grossly erred in holding that an occupant in the Rig is covered under Ex. A-3 policy of Insurance even though

the motor vehicle was not in use?

2. Whether the lower Court has grossly erred in ignoring the applicability of the decision dated 21.02.2003 in L.P.A. No. 184/2000 that when the

motor vehicle was not in use such workmen were not covered under the policy of Insurance?

8. It is an admitted fact that the deceased were crushed to death when they were working inside the borewell due to falling stones. Claimants are

the legal representatives of the deceased. Accident is admitted. It is also admitted that the vehicle viz., lorry as well as the rig were operating at that

point of time. The only argument advanced by the learned Counsel for the Appellant is that when the rig is used for the purpose of digging well, it is

not in motion on the road. Therefore, it is not a vehicle and does not come under the category of transport. Hence, as per Condition 47 Clause (b),

it can at best be called a tool of such vehicle or of a plant, forming part of such vehicle or attached thereto. Therefore, when it is used as a tool,

Insurance Company is exempted from the payment of compensation. But when the policy is analyzed, it is not found mentioned anywhere that the

vehicle is not covered under insurance when it is used as a rig, employed in

stationary position. In this connection, reference has been made to the judgment reported in National Insurance Company Limited Vs. Arumugham, Palaniammal and K.P. Venkatachalam, . In the said judgment, this

Court has held as follows:

12. In the first blush, such a contention of the learned Counsel though appears to be sound and forceful, on a close reading of Endorsement 17 vis-

a-vis the Certificate of Insurance, I am not in a position to accept the said submission of the learned Counsel for the Appellant. In my considered

opinion, Endorsement 17 cannot be read in isolation. If it is read in isolation, certainly the submissions made on behalf of the Appellant looks quite

attractive. In the case on hand, since the Certificate of Insurance related to the vehicle, namely Ashok Leyland rig unit, certainly, at the time of

taking the Policy and issuance of Certificate, it must have been in the contemplation of both the insurer as well as the third Respondent that the

coverage should encompass not only the avocation of driver and cleaner, in the ordinary context of operation and driving of the "Motor vehicle"

carrying the rig unit separately, but it would take within its fold even the operation and maintenance of the rig unit on the whole along with the

Motor Vehicle on which it is mounted. As rightly contended by the learned Counsel for the Appellant, if there had been an Endorsement like

Endorsement No. 37 as was available in the Division Bench decision relied upon by the learned Counsel appearing for the Appellant, it would have

made a whole lot of difference. In the absence of such an Endorsement available in the Certificate of Insurance in this case and when Endorsement

17 alone is available for consideration vis-avis the payment of premium for a driver and a cleaner, it will have to be necessarily held that the cleaner

engaged in respect of the lorry loaded with the rig unit would include his avocation as a cleaner in respect of the lorry as well as the rig unit.

13. In my view any other construction of Endorsement 17 vis-a-vis the payment of premium relating to a driver and a cleaner would not further the

purpose and the intent of the Certificate of Insurance and the coverage made by the Appellant at the instance of the third Respondent. In the said

circumstances, the set of expressions used in Endorsement 17 providing for the persons employed in connection with the operation and/or

maintenance of the goods carrying commercial vehicles will have to be given an

expanded meaning to include the lorry with the rig unit embedded

on it. The cleaner who was engaged in such a lorry with the rig unit would certainly be covered by the policy issued by the Appellant under Ex.P.

4. The construction so made by me on Endorsement No. 17, in my view, would be the proper way of determining the application of the said

clause, in view of the well known canon of construction to be made as set down by the various decisions relating to the subject.

9. It is very clear from the judgment that the exclusion should be specific. Therefore, when there is no such specific exclusion available under IMT

47, the Appellant Insurance Company cannot take recourse under that, especially when there is no evidence even though R.W. 1, employee of the

Appellant Insurance Company, was examined to show that the policy has specifically excluded this condition. When there is no specific exclusion,

as rightly pointed out in the judgment cited supra, I am of the opinion that the Insurance Company is liable to pay under the policy, especially when

it is admitted that the deceased persons were employed in the rig and died in the course of the employment and they were employed under the

owner. The Workmen's Compensation Act was rightly applied and the award granted by the Commissioner is correct.

10. In the result, the questions of law are answered in favour of the Respondents and against the Appellants. In fact, for the first question, it is held

that the Insurance Company is liable to pay and the policy covers the occupant or the employee. The second question of law raised also fails in

view of the judgment cited supra that there should be specific exclusion mentioned in the policy itself.

11. Accordingly, both the appeals are dismissed. There is no order as to costs.

12. It is stated that the entire amount has already been deposited. The claimants were permitted to withdraw 50% of the amount initially. The

claimants are now permitted to withdraw the balance amount with accrued interest.