(2009) 03 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2005 of 1999

National Insurance Company Ltd. APPELLANT

Vs

Runiya Bai and others RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:
Workmens Compensation Act, 1923 — Section 10

Citation : (2009) 3 MPLJ 404

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Amrit Ruprah, for the Appellant; K.N. Pethia, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This appeal was admitted on 4-8-2000 without specifying the substantial question of law involved in the appeal.

This appeal is heard for being adjudicated on the following substantial question of law:

Whether the National Insurance Company Ltd. is obliged to indemnify the employer for the compensation determined by the Commissioner for Workmen''s Compensation, Labour Court, Shahdol on account of death of the workman, namely, Lalla Baiga under the policy of insurance Ex. /D-1 and D-2?

Learned Counsel for the parties addressed this Court at length.

Short facts involved herein are that Indian Railway Construction Company Ltd. undertakes contracts of electrification which, obviously, involves requisite construction etc. Work is executed through contractor. Respondent No. 5 was such contractor. Lalla Baiga, S/o Applicant/respondent No. 1 was engaged by respondent Nos. 2 to 4 through contractor (respondent No. 5) as a watchman. He died during course of employment on 16-2-1993. Applicant submitted an application u/s 10 of the Workmen''s Compensation Act with the aforesaid allegations. It was stated that his monthly salary was Rs. 750/- per month. Compensation to the tune of Rs. 67,914/- with penalty and interest was claimed. Appellant submitted its reply with specific plea that the insurance policy issued by it in favour of respondent Nos. 2 to 4 did not cover the claim of workman.

Other non-applicants submitted their reply that Lalla Baiga was not their workman. Learned Commissioner for Workmen''s Compensation after recording the evidence found that Lalla Baiga was an employee/workman of respondent No. 2 to 5 and that his death took place in an accident on 16-2-1993 during course of his employment. It was further, found that the claim made by respondent No. 1 was covered by the insurance policy issued by non-applicant/ appellant. Accordingly, the claim of respondent No. 1 was allowed to the tune of Rs. 67,200/- which was liable to be paid by non-applicants in a joint and several manner. In case of failure to deposit the amount of compensation within a period of one month 12% interest was made payable from the date of award.

Aggrieved by the aforesaid, this appeal has been preferred on the sole ground that the insurance policy issued by the appellant did not cover the risk of death of an employee of the insured.

Ms. Amrit Ruprah, Learned Counsel for the appellant drew attention of this Court to the insurance policy and conditions annexed thereto contained in Ex. /D-l and D-2. She strenuously argued that the case of death of Lalla Baiga is not covered under any of the clauses of Ex. /D-1 and D-2. Hence, it is contended that the award is not sustainable vis-a-vis, the appellant and the same is liable to be set aside to this extent.

Shri K.N. Pethia, Learned Counsel for respondent No. 1 contended that case of the deceased workman is fully covered by the insurance policy. In the alternative, it is contended that the impugned award is sustainable vis-a-vis, remaining respondents.

Crucial question in this case is that whether the case of death of Lalla Baiga is covered by the terms and conditions contained in Ex. /D-1 and D-2. It has already been found by the Claims Tribunal, perhaps, rightly that the Lalla Baiga was a workman of respondent Nos. 2 to 5 and his death occurred in an accident which took place during the course of employment on 16-2-1993. These findings have not been challenged at all by any of the non-applicants.

Learned Commissioner for Workmen''s Compensation has observed that Pradeep Sinha, the witness of the Insurance Company had admitted that the case of death of a workman is covered under the policy.

On perusal, no such version is found in his statement. On the contrary, he has categorically stated in his statement on oath that no insurance policy was issued in respect of workman.

In the light of the aforesaid, it has become necessary to examine the terms and conditions of the insurance contained in Ex. /D-1 and D-2. Cover note of the insurance policy is Ex. /D-1 whereas the terms and conditions of the insurance policy are Ex. /D-2. Contents of Ex. /D-1 nowhere reveals that the case of death of a workman is covered under the policy. It is true that on the top of Ex. /D-1 it was mentioned that all risks in the project of erection were covered by the said policy. However, in the head of Nature of Project, the specifications are mentioned as below:

Supply, storage, erection, testing and commissioning of railway traction overhead equipment LT supply transformer station on Anuppur to New Katni section.

From perusal of the aforesaid, it is clear that the death of a workman (watchman) of respondent Nos. 2 to 4 themselves is not covered.

Ex. /D-2 is a insurance policy with a caption (Erection All Risks Insurance Policy). Scope of indemnification under the policy is categorised in two sections. Section-I obliges the appellant to indemnify the loss on account of material damage whereas section-II obliges the appellant to indemnify the loss on account of third party liability. Relevant portion of section-I and section-II are reproduced below:

Section-I Material Damage:

The company hereby agrees with the insured (subject to the exclusions and conditions contained herein or endorsed hereon) that if at any time during the period of insurance stated in the said Schedule or during any further period of extension thereof the property (except packing material of any kind) or any part thereof described in the said Schedule be lost damaged or destroyed by any cause other than those specifically excluded hereunder in a manner necessitating replacement or repair the Company will pay or make good all such loss or damage up to amount not exceeding in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in the whole the total sum insured hereby.

Section II - Third Party Liability:

The Company will indemnify the insured against:--

(a)..............

(b) legal liability (liability under contract excepted) for fatal or nonfatal injury to any persons other than the insured''s own employees or workmen or employees of the owner of the works or premises or other firms connected with any other erection work thereon or members of the insured''s family or of any of the aforesaid directly consequent upon or solely due to the erection of any property described in the Schedule.

Provided that the total liability of the Company during the period of insurance under this clause shall not exceed the Limits of indemnity set opposite thereto in the Schedule.

In respect of a claim for compensation to which the indemnity provided herein applies the Company will in addition indemnify the insured against

(a) all cost and expenses of litigation recovered by any claimant from the insured and

(b) all costs and expenses incurred with the written consent of the Company.

The exclusion contained in paragraphs (d) (f) and (g) in section I of this Policy shall apply also to this section.

Exclusions to section II

The Company will not indemnify the insured in respect of

....

....

Liability consequent upon

(a) bodily injury to or illness of employees or workmen of the Contractor(s) or the Principal(s) or any other firm connected with the project which or part of which is insured u/s I or members of their families

(b)..........

(c)..........

(d)..........

Liability of compensation due to death of a workman/employee is obviously not covered u/s I (supra). Section II although covers third party liability for fatal or non-fatal injury, clause (b) thereof excludes an employee/workman of the insured from the applicability of section II. This is also made clear by the Exclusion clause which expressly and specifically lays down that the Insurance Company will not indemnify the insured in respect of liability consequent upon bodily injury of an employee/workman of the contractor or the principal or any other firm connected with the project.

Lalla Baiga was an employee whereas respondent No. 5 was the contractor and respondent Nos.2 to 4 were principals. This being so, the case of death of Lalla Baiga during course of his employment is squarely covered by the exclusion clause (supra) and I am of the considered opinion that the appellant is under no obligation to indemnify for compensation on account of Lalla Baiga''s death during course of his employment under the cover note Ex. D-1 or Insurance Policy Ex. /D-2. Accordingly, I hold that the impugned order fastening of liability on the appellant is not sustainable in law. Substantial question of law raised hereinabove is thus, decided in favour of non-applicant/appellant.

Since, Lalla Baiga was found to be workman/employee of respondent Nos. 2 to 5, the applicant being his mother would definitely be entitled to compensation u/s

10 of the Workmen''s Compensation Act, 1923 on account of the death of former during course of his employment. this Court on 4-8-2000 directed that in the event of the appellant depositing 50% of the awarded amount, the recovery of the balance shall remain stayed. Further, on 18-3-2002 this Court observed that the Labour Court to accede to the request of respondent No. 1 for payment. In case, if, the respondent No. 1 has withdrawn the amount of compensation or part thereof payable to her under the impugned award, the appellant would be entitled to recover the same from respondent Nos.2 to 4. It is further made clear that the respondent No. 1 shall be entitled to recover the amount of compensation or the balance money as the case may be from respondent No. 2 to 5 in a joint and several manner with interest @ 12% per annum until realisation as directed by the award.

In the result, the appeal is allowed in the aforesaid manner. It is held that the appellant is not liable to indemnify respondent Nos. 2 to 4 for the amount of compensation. Any amount paid by it under the award of the Commissioner for Workmen''s Compensation shall be recoverable by it from respondent Nos. 2 to 4. Balance money under the award would be recoverable by respondent No. 1 from respondent Nos. 2 to 5 alone. Other terms and conditions of the award are hereby maintained. Award be modified accordingly.

No order as to costs.

