
(2006) 08 MAD CK 0157
In the Madras High Court
Case No : C.M.A. (NPD) No. 1655 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Arunachalam and Others

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 12

Citation : (2007) ACJ 1580

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : C. Ramesh Babu, for the Appellant; D. Baskar, for P. Gunaraj and Meenakshisundaram, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—This matter arises under the Workmen's Compensation Act. The insurance company, the opposite party No. 3 before the Commissioner, is on appeal against the order of the Commissioner for Workmen's Compensation, wherein they figured as opposite party No. 3.

2. It is stated that the applicant's son was a security personnel selected by the Security and Detective Bureau Ltd., the opposite party No. 2 in the proceedings before the Commissioner and now the respondent No. 3 before this Court.

3. It is stated that deceased Anandhavelu was appointed by the opposite party No. 1, the respondent No. 2 before this Court through the respondent No. 3 herein. At the time of death, he was 22 years old. On 13.11.1994, while Anandhavelu was working in the second shift, he died in the course of his employment. The opposite party No. 1, the principal employer and the opposite party No. 2, the contractor, were liable to pay the compensation. Since the appellant herein was directed to indemnify the loss to the opposite party No. 1, the respondent No. 2 herein, the appellant has approached this Court under the provisions of the Workmen's Compensation Act.

4. In the counter-affidavit filed by Vanavil Dyes and Chemicals Pvt. Ltd., the respondent No. 2 herein, the principal employer had stated that the deceased was not earning a sum of Rs. 2,500 and that he was earning only a sum of Rs. 650 per month and it was paid by the opposite party No. 2, namely, the contractor and hence not liable to pay the compensation.

5. It is further stated that on 13.11.1994, two security guards, namely, A. Boopalan and A. Anandhavelu employed by opposite party No. 2, were posted in the second shift to work from 4 p.m. to 12 midnight. It was also stated that Anandhavelu had informed Boopalan that he was suffering from headache and stomach pain. At 7.20 p.m., when Boopalan requested the deceased to go for dinner, the deceased had requested Boopalan to go first. On his return, Anandhavelu was found dead. Immediately, the same was informed to the superiors.

6. In the contractor the respondent No. 3's counter-affidavit, it is stated that the deceased was paid a sum of Rs. 650 per month only and that there was no accident arising out of or in the course of employment. Since the deceased was employed by the opposite party No. 1, insured with the opposite party No. 3, the appellant herein, the opposite party No. 3 alone was responsible to pay the compensation.

7. Insurance company filed its counter-affidavit wherein, it was stated that there was no privity of contract between them and opposite party No. 1, to indemnify the opposite party No. 1 for the death of its security guards. It was further stated that respondent No. 3 herein had taken a Group Personal Accident Policy. However, that would not come under the jurisdiction of the Workmen's Compensation Act and hence, prayed for exonerating them from the liability under the Act.

8. Three questions were raised before the Commissioner for Workmen's Compensation:

(i) Whether the deceased died out of injury by accident arising out of and in the course of his employment?

(ii) Whether the claimants are entitled to receive the compensation as per the Workmen's Compensation Act?

(iii) Which opposite party was responsible for payment of compensation?

9. The Commissioner held that claimant had proved that the deceased had died out of an injury in the course of employment and, therefore, the claimant was entitled for the compensation. On the question of compensation, the Commissioner held that the deceased was receiving a salary of Rs. 650 per month. The compensation was computed at Rs. 57,905, taking note of the age of the deceased at 21 years. On the question of liability, the Tribunal referred the decision reported in K. Koodalingam Vs. Supt. Engineer and Others, and held Section 12 of the Act would apply to the case. It also noted the decision gave the

guidelines in the case of employer taking the services of an employee through a contractor-that where the principal employer carrying on a trade or business, in the course of the same engages the services of the contractor; that the work is ordinarily a part of the trade or business of the principal; the accident occurred in the premises on which the principal had undertaken to execute the work; the accident had occurred while the workman was in the course of his employment in executing the work. Tribunal accordingly held that the provisions u/s 12 of Workmen's Compensation Act would apply to hold the principal employer liable to pay the compensation. Hence, on the question of compensation, the Commissioner held that opposite party No. 1 was liable to pay the compensation. Further, as opposite party No. 1 had insured the workmen employed by them with opposite party No. 3, the insurance company, opposite party No. 3, was also liable to indemnify the opposite party No. 1 for its liability to pay the compensation.

10. Aggrieved by the observation that the insurance company was also liable to make the payment, questions are raised before this Court as to whether the Commissioner had jurisdiction to entertain the petition filed by the applicant and decide the case against appellant, since the policy issued was in favour of the opposite party No. 2, the insured contractor, who is primarily liable to pay damages in respect of an injury caused to the workman? Whether the petition filed by the applicant is maintainable against the appellant insurance company u/s 12 of Workmen's Compensation Act? Whether the appellant is also liable to pay the compensation or any amount ordered to be deposited before the Commissioner, since the policy was a Group Personal Accident Insurance Policy issued in favour of the opposite party No. 2, namely, the contractor? Whether there was any privity of contract between the opposite party No. 1 and opposite party No. 3, namely, the appellant herein?

11. Learned Counsel appearing for the appellant submitted that the Commissioner went wrong in his finding that the policy was taken by the contractor as a Group Personal Insurance Policy. Unless the policy is taken under Workmen's Compensation Act, the question of fastening the liability on the insurance company does not arise. Admittedly, the policy is one taken by the contractor. Hence, he submitted that if at all there is any liability payable, it is only by the opposite party No. 1, the principal employer, respondent No. 2 herein and at no point of time can it be extended, by any reason, to the appellant herein. Consequently, the order merited reversal, particularly as against the liability fastened on the appellant herein, namely, the insurance company.

12. I have gone through the order of the Commissioner.

13. As rightly pointed out by learned Counsel for the appellant, unless the policy is one taken under Workmen's Compensation Act, the question of fastening the liability upon the insurance company does not arise. Consequently, as a principal employer, the liability is only on respondent No. 2, even though the deceased was on contractual service through respondent No. 3 herein. Hence, applying the

provisions of Workmen's Compensation Act under the definition of "principal employer", while the Commissioner had rightly arrived at the decision, the further fastening of the liability on the insurance company does not arise. Consequently, the order insofar as the appellant herein, is hereby set aside.

14. The Supreme Court, in the decision reported in *New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another*, , has categorically held that the question of fastening the liability on the insurance company under the insurance cover, unless it is one taken under the provisions of the Workmen's Compensation Act, will not have a bearing in the matter of extending the same on the insurance company. The Apex Court held referring to the decision reported in *P.J. Narayan Vs. Union of India (UOI) and Others*, , as follows:

(20) The views taken by us find support from a recent judgment of this Court in *P.J. Narayan Vs. Union of India (UOI) and Others*, , wherein it was held:

(1) This writ petition is for the purpose of directing insurance company to delete the clause in the insurance policy which provides that in case of compensation under Workmen's Compensation Act, 1923, the insurance company will not be liable to pay the interest. We see no substance in the writ petition. There is no statutory liability on the insurance company. The statutory liability under the Workmen's Compensation Act is on the employer. An insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on the liability for interest. In the absence of any statute to that effect, insurance company cannot be forced by courts to take on liabilities which they do not want to take on. The writ petition is dismissed. No order as to costs".

15. It may be noted that as per the provisions of Workmen's Compensation Act, the compensation carried interest, which must be paid from the date of the petition. The Commissioner has ordered 6 per cent interest per annum from the date of receipt of the order, failing which, the same shall be recovered from the date of the accident. Learned Counsel appearing for respondent-principal employer submitted that at this distance of time, they should not be fastened with the liability of interest at 6 per cent per annum. Consequently, it is submitted that insurance company was liable to make the payment to the extent only ordered and to recover it from respondent No. 3 herein. I do not find any reason to accept this line of argument. However, the claimants who are now before this Court were asked to consider settlement as regards the interest payable which works hardship on respondent No. 2. Considering the facts and this distance of time, the question of interest will be too much on their resources and the parties were willing to consider the settlement as regards the consolidated amount receivable by them. The parties, namely, the respondent No. 1 and respondent No. 2 agreed to settle the amount at a consolidated sum of Rs. 75,000 which includes the sum of Rs. 57,905, namely, the compensation awarded and the balance of interest payable. While allowing the appeal, it is

hereby recorded that the respondent No. 2 shall make a payment of Rs. 75,000 to the respondent No. 1, which is an all inclusive amount, in full and final settlement of the claim. Respondent No. 2 shall pay the said amount within a period of four weeks from the date of receipt of a copy of this order.

With the above observation, the appeal is allowed. There will, however, be no order as to costs.