(2018) 02 MAD CK 0238

In the Madras High Court

Case No : 1029 of 2016

The Branch Manager APPELLANT

Vs

Indira & Ors RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Motor Vehicles Act, 1988, Section 149, Section 149 - Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks

Citation : (2018) 02 MAD CK 0238

Hon'ble Judges : J.Nisha Banu

Bench : Single Bench

Advocate : B.Vijayakarthikeyan, S.Pon Senthil Kumaran.

Final Decision : Dismissed

Judgement

1. This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 13.05.2016 made in W.C.No.4 of

2013 on the file of the Commissioner for Workmen''s Compensation (Deputy Commissioner of Labour), Madurai.

2. The appellant is the second respondent in W.C.No.4 of 2013. The respondents 1 and 2 herein filed the said petition stating that they are the

legal heirs and dependents of the deceased Moorthi @ Uthira Moorthi, who was a workman employed as a Driver under the first respondent''s

vehicle bearing Registration No.TN 57 AD 1369. It is further averred that on 11.09.2011, at about 02.00 p.m., while the deceased was driving

the above said vehicle, towards south to north at Thirumangalam to Dindigul Four Way Road, on the southern side of Thuvariman Kanmai, since

the driver has lost the control of the vehicle, dashed against the Container Lorry bearing Registration No.TN 69 J 5166 and due to that, the vehicles were capsized and in the said accident, the said Moorthi @ Uthira Moorthi sustained multiple injuries and died on the spot.

3. Before the Deputy Commissioner of Labour, Madurai, the respondents 1 and 2/ claimants examined one witness as P.W.1 and marked nine

documents as Ex.P.1 to Ex.P9. The appellant/Insurance Company examined Two witnesses as R.Ws.1 and 2 and marked four documents as

Exs.R1 to R4.

4. After considering all the materials and evidences, the Deputy Commissioner of Labour, Madurai, held that the accident happened in the course

of employment by the deceased as a Driver and since the vehicle was insured with the appellant/Insurance Company, directed the Insurance

Company to pay the compensation, to the claimants.

5. Challenging the said award, the appellant/Insurance Company has preferred this appeal challenging the liability.

6. At the time of admission, the following substantial questions of law have been framed:

1.Whether the Insurance Company can be mulcted with the liability to pay compensation, when there is a breach of policy

condition?; and

2.Whether the Insurance Company can avail the defences available under Section 149 of the Motor Vehicles Act in a proceeding

under the Workmen Compensation Act, 1923 inasmuch as the Insurance Policy is issued under the Motor Vehicles Act?

7. The learned counsel appearing for the appellant/Insurance Company would contend that there is violation of policy conditions as there were 13

persons travelled in the vehicle at the time of accident as against the seating capacity of 8 persons and further, the deceased/driver of the vehicle,

did not possess valid driving licence, at the time of accident and therefore, the Deputy Commissioner erred in directing the appellant to pay

compensation to the claimants for the death occurred during the course of employment and prays for setting aside the order passed by the Deputy

Commissioner.

8. Per contra, the learned counsel appearing for the respondents 1 and 2/ claimants submitted that after considering the evidence only, the Deputy

Commissioner passed an award in favour of the claimants and directed the appellant/Insurance Company to pay the compensation and therefore,

the award of the Deputy Commissioner, does not warrant interference at the hands of this Court and prays for dismissal of this appeal.

9. Heard the submissions made on either side and perused the materials available on record.

10. The main contention put forth by the learned counsel appearing for the appellant/Insurance Company is that there is violation of policy

conditions as there were 13 persons travelled in the vehicle and the Driver did not possess valid driving licence at the time of the accident.

11. A perusal of the award shows that, in Paragraph No.11 of the award, the Deputy Commissioner has discussed in detail as follows:

VERNACULR MATTER OMITTED

12. In view of the above, it is clear that though the F.I.R states that 13 persons travelled in the Van, above the seating capacity, it has not been

proved by examining the Police Official. Further, the evidence of R.W.1, an Official from the Regional Transport Office, shows that there is

possibility of getting driving licence by the deceased from other Regional Transport Office and there is no concrete evidence to show that the

deceased has got no licence and there is no evidence to show that there is breach of policy conditions and since the Insurance Policy was in force

at the time of accident, the appellant/Insurance Company is liable to pay compensation to the claimants and therefore, in my considered opinion,

there is no infirmity in the finding rendered by the Deputy Commissioner and the questions of law framed in this appeal are answered as against the

appellant/Insurance Company.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 13.05.2016 made in W.C.No.4 of 2013 on the file of the

Commissioner for Workmen''s Compensation (Deputy Commissioner of Labour), Madurai, is hereby confirmed. The appellant/Insurance

Company is directed to deposit the entire award amount with accrued interests and costs, if not already deposited, within a period of eight weeks

from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/first claimant is permitted to withdraw her

share as apportioned by the Deputy Commissioner, with proportionate interests and costs. The Deputy Commissioner is directed to deposit the share of the second respondent/minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The

guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of

minor. No Costs. Consequently, connected Miscellaneous Petitions are closed.

