
(1987) 02 KL CK 0010
In the High Court Of Kerala
Case No : M.F.A. No. 90 of 1982

Ayisha Beevi

APPELLANT

Vs

Kalidasan

RESPONDENT

Date of Decision : 06-02-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 95(1), 95(2)
Workmens Compensation Act, 1923 — Section 108

Citation : (1987) ACJ 584 : (1987) KLJ 417

Hon'ble Judges : V. Sivaraman Nair, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : C.R. Natarajan and M.K. Anandakrishnan, for the Appellant; R.D. Shenoil and Mathews Jacob, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Sivaraman Nair, J.—The owner of a goods vehicle, which was involved in an accident on 15.7.1978 and as a result of which the cleaner of the vehicle was crushed to death, is the Appellant. He assails the judgment of the Motor Accidents Claims Tribunal, Calicut in M.A.C. No. 110 of 1981. The Tribunal awarded an amount of Rs. 31,500/- as compensation due to the parents of the deceased cleaner, against the claim of Rs. 75,000/- made by them. The liability of the insurer was limited to an amount of Rs. 21,000/- which was the amount of compensation payable in respect of death of a person based on the monthly salary which the deceased cleaner was drawing at the time of the death. The Tribunal directed that the balance amount of Rs. 10,500/- shall be paid by the owner of the vehicle. The Appellant submits that this direction is unsustainable.

2. Counsel for the Appellant raised only two points: the first was that the Motor Accidents Claims Tribunal was not entitled to award any amount in excess of the liability specified in the Table attached to the Workmen's Compensation Act in the case of the death of an employee; and the second was that the Tribunal was not right in limiting the liability of the insurance company to the amount of

compensation payable under the Workmen's Compensation Act.

3. Proviso to Section 95(1) of the Motor Vehicles Act deals with the liability for payment in respect of the death or bodily injury sustained by an employee arising out of or in the course of his employment. Relevant portions of that provision are as follows:

95. Requirements of policies and limits of liability. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed u/s 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)

x x x

Provided that the policy shall not be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee

x x x

(c) if it is a goods vehicle, being carried in the vehicle, or

x x x

4. It is evident that the double negative used in the proviso makes it obligatory that the liability under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury of an employee being carried in the goods vehicle is a liability which has to be insured. It is also clear that unless otherwise shown, the extent of that liability is the same as the extent provided under the Workmen's Compensation Act.

5. Counsel for the Appellant submitted that the measure of damages in the case of an employee who is covered by the provisions of the Workmen's Compensation Act is provided by the amount payable thereunder and no more than that can be claimed or awarded in the case of death or bodily injury of such a person. We do not find anything in Section 95(1) or any other provision in the Act which imposes, by express terms or by necessary implication, any limitation on the extent of general damages which can be claimed by such an employee. Counsel was right in conceding that there is nothing in the general law which imposes any such restriction. We are, therefore, not in a position to accept the first submission that the amount of compensation awardable in the case of death or bodily injury of an employee covered by the Workmen's Compensation Act

must be limited to the one payable thereunder.

6. It is equally evident that unless it is otherwise shown, the limit of liability for payment of compensation in relation to the death or bodily injury of an employee being carried in a goods vehicle is limited to the amount of compensation payable under the Workmen's Compensation Act. Admittedly, no attempt was made by the insured-Appellant in this case to urge or prove before the Tribunal that the insurer was obliged to pay compensation in excess of the liability imposed by Section 95 of the Act. In the absence of any pleadings or proof, the Tribunal was correct in coming to the conclusion that the insurer was liable to pay only that amount which it was obliged to pay u/s 95(1) of the Act. We are, therefore, not persuaded to hold that the Tribunal went wrong in directing the owner of the vehicle, Appellant herein, to pay the balance amount of Rs. 10,500/- out of the total compensation awarded by it.

The appeal, therefore, fails and is hereby dismissed. The claimants are entitled to their costs in this appeal.