
(2000) 07 KL CK 0050
In the High Court Of Kerala
Case No : M.F.A. No. 1002 of 1992

New India Assurance Co. Ltd.

APPELLANT

Vs

Lakshmi and Another

RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 165

Citation : (2001) ACJ 910 : (2000) 3 ILR (Ker) 539

Hon'ble Judges : N. Krishnan Nair, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant; Babu Thomas K. and V.V. Surendran, for the Respondent

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J.—Insurance company is the appellant. On 21.5.1990 the claimant in O.P. (MV) No. 271 of 1990 (respondent No. 1 herein) out of which this M.F.A. arises, sustained injury by a fertilizer bag falling upon her in the process of unloading it from a stationary lorry of which the respondent No. 2 herein is the driver-cum-owner. There was a controversy before the Tribunal on the point as to whether the accident took place when the vehicle was in motion or stationary. The Tribunal on appreciation of evidence found that the accident took place when the vehicle was stationary and even so, the appellant is liable to indemnify the respondent No. 2 owner-cum-driver because the accident arose out of the "use" of a motor vehicle and in that view, passed an award directing the appellant to pay a sum of Rs. 15,250 with 12 per cent interest from the date of petition and proportionate cost. Being aggrieved by the aforesaid award, the insurance company has preferred this appeal. The quantum of compensation awarded is not under challenge. The challenge is confined only to the finding of the Tribunal that the accident arose out of the use of the motor vehicle. According to the appellant insurance company, on the facts disclosed, it cannot be said that the accident was one arising out of the "use" of the motor vehicle

and as such the Tribunal had no jurisdiction to entertain a claim petition u/s 165 of the Motor Vehicles Act, 1988 (for short "the Act").

2. Having heard counsel on both sides, we are of opinion that the appellant is not well-founded in its submission and the Tribunal, in our considered opinion, was perfectly right in holding that the accident was one arising out of the use of the motor vehicle. In this connection, it has to be noted that jurisdiction u/s 165 of the Act is attracted if there is an accident involving death of or bodily injury to a person arising out of the use of a motor vehicle. The primary fact which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word "use" is used in the section in a wide sense. It covers all employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is "user" of the vehicle within the provisions of Section 165 of the Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, whenever the vehicle is driven out for some purpose or it is kept stationary. This, without anything more, is sufficient to attract Section 165 of the Act. Therefore, whenever any accident occurs causing death of or injury to persons because of the vehicle or its user the jurisdiction of the Claims Tribunal is attracted. Any accident occurring in the course of the user for carriage of passengers or otherwise is liable to be compensated through the forum provided u/s 165 of the Act. The basic requirement of such claim is only that it should arise out of the use of motor vehicle. There is no warrant for the contention that the accident should take place at a time when the vehicle was in motion or the accident has resulted in damage to the vehicle. All that is required is that there should be an accident, viz., something unexpected and unintended and that should arise out of the user of the vehicle. [Vide Padmanabhan Nair v. Narayanikutty 1988 ACJ 58 (Kerala)]. Adverting to the language and phraseology employed in Section 165 of the Act, a Division Bench of this court in the decision in Babu Vs. Remesan and Others, , observed as follows:

Learned counsel for the insurance company tried to distinguish those decisions on the facts by pointing out that the use of the motor vehicles in those two decisions is direct, though the vehicles were stationary whereas in this case the use of the motor vehicle was only indirect though the rope was used for the purpose of keeping the load in the vehicle intact. The said distinction on the facts is not enough to exclude the accident which occurred in this case out of the ambit of the words "use of a motor vehicle". Such use need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. The expression employed by the legislature is "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of a motor vehicle". Evidently the legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the

compensation cases are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word "use" in the present context.

(Emphasis added)

The facts of the above case were that some workers sustained burn injuries when the rope used for tying the load in the vehicle touched electric wire while it was being thrown up to the other side of the vehicle. Repelling the contention advanced by the insurance company that the accident did not take place as a result of use of the motor vehicle, the Division Bench held that the accident in fact arose out of the use of a motor vehicle adopting a benevolent construction bearing in mind the social objective of the legislation. We take note of the fact that we are dealing with a benevolent legislation and being a benevolent legislation it is a well-known canon of interpretation that in interpreting such a legislation, the court will normally adopt an interpretation which would favour persons sought to be benefited by the legislation. Where the courts are faced with a choice between a wider meaning which carries out what appears to have been the object of the legislature more fully and a narrow meaning which carries it out less fully or not at all, they will often choose the former. [See Maxwell on Interpretation of Statutes, 12th Edn., page 92]. This court as well as the Apex Court have consistently adopted beneficial constructions in such situation and held that the expression "use" in Section 110 of the Act should be given a wide interpretation. [Vide Sharlet Augustine and Others Vs. K.K. Raveendran and Others, and Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More,]. For the aforesaid reasons, the finding of the Tribunal that the accident was one arising out of the use of the motor vehicle is only to be sustained. Accordingly, we confirm the award of the Tribunal and hold that the respondent-claimant No. 1 is entitled to compensation on the ground that the accident was one arising out of the use of a motor vehicle.

3. Of course, learned counsel for the insurance company brought to our notice the decision in Kanhei Rana and Another Vs. Gangadhar Swain and Others, , wherein, the Orissa High Court while considering an identical fact situation, held that when the accident took place due to the fall of a log on the claimant when the truck was being unloaded with log, it cannot be said that the fall of the log was occasioned out of the use of the vehicle. With respect, we cannot subscribe to the view especially in the light of the Division Bench decisions of this court holding otherwise.

In the result, we confirm the award and dismiss this appeal.