

(2003) 04 KL CK 0051
In the High Court Of Kerala
Case No : M.F.A. No. 372 of 2003

New India Assurance Company Ltd.

APPELLANT

Vs

Mathai and Others

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 167
Workmens Compensation Act, 1923 — Section 2

Citation : (2003) 2 ACC 537 : (2003) ACJ 1977 : (2003) 2 AnWR 65

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Thankappan, J

Bench : Division Bench

Advocate : Lal George, for the Appellant;

Final Decision : Dismissed

Judgement

Abdul Gafoor, J.—This appeal is filed by the insurer impugning the award in O.P. (MV) No. 270 of 1996 of the Motor Accidents Claims Tribunal, Perumbavoor.

2. It is contended that the deceased was travelling in a goods vehicle and that he was not the employee of the owner, the insured. He was also not the owner of the goods carried in the vehicle or the representative of the owner of the goods. Therefore, he cannot be said to be covered by an Act only policy issued by the appellant covering the vehicle involved in the accident.

3. The contention of the claimants before the Tribunal was that the deceased was a headload worker being carried in the goods vehicle in question bearing registration No. KL-01/8422, as noted by the Tribunal below, "in connection with the loading and unloading work". It was at that time, the accident occurred.

4. Though the policy in question was in Act only policy, four other workers, other than the driver of the vehicle, were covered by the policy. This is an admitted position. The appellant insurer does not have a case before us that he owner of the goods or the representative of the owner of the goods was in the vehicle accompanying the goods. When the owner had undertaken to transport the

goods carried in the vehicle, so long as the owner of the goods was not accompanying the goods, it was the duty of the owner of the vehicle to take the goods to the destination and unload the same. Necessarily, the owner of the vehicle has to employ some persons for unloading the goods. The persons so employed for unloading the goods carried in the vehicle will necessarily become his workers. Four workers, other than the driver, were covered by the Act only policy. Necessarily they, being employed in connection with the transportation and unloading of the goods carried in the vehicle by the owner of the vehicle, they will come within the definition of "workman" in Section 2(n) of the Act.

5. An Act only policy admittedly covers the workers to the extent insured. A workman has got two options, one under the Motor Vehicles Act and another under the Workmen's Compensation Act. When he has got the above mentioned options, he can opt for Section 167 of the Motor Vehicles Act, 1988. In this case, the dependents of the deceased rightly opted for a better remedy and their case has been accepted. Even though a contention was taken, very vaguely, in the written statement of the appellant - insurer before the Tribunal that the contention of the claimants that they were headload workers is far from the truth, no effort has been made by the insurer to pursue that contention. That contention appears to have been made only half heartedly. There was specific averment that the workers were travelling in the vehicle in connection with their employment as headload workers, as rightly noted by the Tribunal which we have extracted earlier. Necessarily, on the basis of the evidence, it has to be taken that their averment stands proved.

The appeal, therefore, fails and it is dismissed.