

(2011) 01 KL CK 0240
In the High Court Of Kerala
Case No : M.A.C.A. No. 2826 of 2009

New India Assurance Company Ltd.

APPELLANT

Vs

Rajula Beebi and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Workmens Compensation Act, 1923 — Section 4

Citation : (2013) ACJ 994 : (2011) 3 ILR (Ker) 344

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : K.K.M. Sherif, for the Appellant; V. Chitambaresh T.C. Suresh Menon and V. Balangangadharan, for the Respondent

Judgement

P.Q. Basheer, J.—Is a person accompanying goods in a "trailer" attached to a Tractor, covered under the policy issued by the Insurance Company?

2. Is the Insurance Company liable to indemnify the owner of the Tractor, especially since, the victim was not admittedly an employee under the insured?

3. The above two questions were answered by the Tribunal in favour of the claimants. The Appellant--Insurance Company impugns the above aware, in this appeal.

4. On June 3, 2003 the deceased was accompanying a few drums containing electric cable loaded in a trailer attached to a tractor. It is on record that the hook of the trailer somehow got detached from the tractor and the heavy drum which contained electric cable fell on the body of the deceased who was admittedly sitting in the trailer along with the goods. The deceased succumbed to the injuries later. The legal representatives of the deceased claimed compensation from the owner, driver and insurer of the tractor.

5. The Tribunal, after considering the oral and documentary evidence adduced by the parties, held that the accident occurred due to the negligence of the driver of

the tractor and that going by the terms of the policy, the Insurance Company would be liable to compensate the legal representatives of the victim. Accordingly the Insurance Company was directed to pay a sum of Rs. 3,50,900 with 7.5% interest.

6. Though a contention has been raised by the Appellant in the memorandum of appeal that the trailer was not covered under Ext. B-1 policy, it is fairly conceded before us that the owner had paid additional premium in respect of the trailer as well. Therefore, Learned Counsel submits that the Tractor and the trailer were covered under Ext. B-1 policy.

7. However, it is contended by the Learned Counsel that the Appellant would not be liable to indemnify the owner insured, since admittedly the deceased was not an employee under him. Learned Counsel points out that the Tractor and the trailer were admittedly hired by a Company, M/s Best and Crompton from the owner/insured and that the deceased was an employee under the said hirer. Therefore going by the terms of the policy, the deceased would not be covered under the policy.

8. It may be true that the deceased was not an employee/workman of the insured. But it is beyond controversy that the Tractor with the trailer attached thereto, was hired by a Company for its use at its work site. Necessarily therefore it has to be assumed that the workman under the hirer would be employed by the hirer. The policy issued by the Appellant admittedly covered the risk of 7 employees as is evident from Ext. B-1 policy itself. If the policy did cover the risk of 7 employees, it cannot be said that those 7 employees must necessarily be the workers who are actually engaged by the insured himself.

9. In effect, the policy coverage is vis-a-vis the vehicle (Tractor) and the employees engaged for its operation. The question whether the accident occurred while it was being used by the insured himself or by any person authorised by him (in this case, the hirer--Company) is immaterial so far as the third party is concerned. The issue of dispute, if any, between the insured and the hirer has to be sorted out and settled between them. The claim made by the legal representatives of the victim cannot be put in jeopardy. Appellant does not have a case that the Tractor and trailer were given on hire in violation of any of the policy conditions. To put it differently, there is no prohibition in the policy in letting the Tractor and the trailer for hire or reward. There is also nothing on record to indicate that the tractor and the trailer were being used for any illegal purposes. Therefore, in our view, the employee engaged by the hirer will also be covered under Ext. B-1 policy.

10. The next contention raised by the Appellant is that the deceased being a passenger in the "trailer", he would not be covered under the policy in question. It is contended by the Learned Counsel that a "trailer" is not meant for carrying any passengers and therefore, if the deceased was permitted to travel in the trailer which was meant for carrying goods, it would have been at the risk of the

owner alone and the Appellant cannot be held liable to compensate the victim of the accident.

11. In this context it may be noticed that the very caption of Ext. B-1 policy reads thus:

Goods carrying commercial vehicles (open) policy--"A" liability only.

As has been noticed already, additional premium had been paid by the owner not only for the tractor but for the trailer as well. Therefore going by the terms of the policy it is apparent that goods could be carried in the trailer attached to the tractor.

12. The next question that arises for consideration is whether any person/workman could have been carried in the trailer along with the goods. It is not in dispute that the deceased was accompanying the drums containing electric cable in the trailer. He was admittedly employed under the hirer. Therefore there can be no doubt that the deceased was authorised to accompany the goods by its owner. In that view of the matter, the contention raised by the Appellant that the deceased was a "gratuitous passenger", cannot be countenanced at all.

13. The next contention raised by the Appellant is that the Tribunal ought to have awarded compensation only in terms of the provisions contained under the Workmen's Compensation Act since apparently additional premium was paid only to cover the risk of employees under the said Act. In other words, the contention is that the liability of the Appellant to indemnify the insured ought to be restricted to one under the Workmen's Compensation Act. It is true that the owner of the goods had paid additional premium to cover the risk of his 7 employees under the Workmen's Compensation Act.

14. The claim was laid by the legal representatives of the deceased-- victim u/s 166 of the Motor Vehicles Act. The Tribunal has computed compensation as provided under the Motor Vehicles Act. Therefore there is considerable force in the contention raised by the Appellant in this regard. Going by the provisions contained in Section 4 of the Workmen's Compensation Act and the age, relevant factor etc. as indicated in Schedule 4 of the Act, the Compensation payable under the Workmen's Compensation Act would come: to only Rs. 2,63,940 with 12% interest thereon in addition to Rs. 2500 towards funeral expenses.

15. As has been noticed already, the Tribunal has awarded Rs. 3,50,900 with 7.5% interest. Since the liability of the Appellant is restricted to the one under the Workmen's Compensation Act, it is held that the Appellant shall be liable to pay only Rs. 2,63,940 with 12% interest in addition to Rs. 2500 towards funeral expenses.

16. However Appellant shall pay the entire amount of compensation to the claimants as directed in the impugned award. But it is made clear that the Appellant shall be entitled to recover the amount in excess of its liability under

the Workmen's Compensation Act, from the owner and driver of the offending vehicle.

The appeal is disposed of in the above terms.

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