

(2008) 11 KL CK 0024
In the High Court Of Kerala
Case No : MACA No. 228 of 2006

Rajan P.

APPELLANT

Vs

K.J. John and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 2(34)

Citation : (2006) ACJ 2631 : AIR 2009 Ker 136 : (2009) 1 ILR (Ker) 448 :
(2009) 1 KLJ 618 : (2009) 1 KLT 573

Hon'ble Judges : Harun-UI-Rashid, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Viju Thomas and M. Meena John, for the Appellant; Mathews Jacob P. Jacob Mathew, Saji Mathew and Mable C. Kurian, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The appeal is filed against the order of the MACT dismissing a claim petition filed by the appellant for compensation for injury sustained by him in an accident claimed by him to be road accident. We have heard counsel appearing for the appellant, Senior counsel appearing for the Insurance Company and counsel appearing for the registered owner of the vehicle involved in the accident.

2. The facts leading to the case are the following. On 4-3-1998 at around 7.30 p.m. a load of marble was being unloaded in the house premises of a person who purchased and transported marble to his house in the same truck. The appellant's case is that while unloading the marble, driver of the vehicle took it in the reverse gear which led to a marble piece falling on his left leg causing serious injury. Before the MACT, Insurance Company pleaded that accident occurred in a private premises i.e., in the compound of a house and that accident is not on account of any rash and negligent driving of the vehicle and it is an accident that took place while unloading the goods from a stationary truck. The MACT accepted the plea of the Insurance Company and held that there is no policy coverage because accident did not take place in a public place which is a

requirement for liability for the Insurance Company u/s 147 of the Motor Vehicles Act. Counsel for the appellant submitted that accident occurred while the vehicle was taken in the reverse direction by the driver when marble was being unloaded. However, Senior counsel for the Insurance Company brought to our notice the Police record which shows that for the accident occurred on 4-3-1998, a private complaint was filed on 23-7-1998 and pursuant to court orders, the Investigation Officer found that the accident happened when marble was unloaded from the stationary truck and based on this he contended that the case of the appellant that accident took place when the driver took the vehicle in the reverse is a bogus one. The belated complaint filed and the case put forward by the appellant that the accident took place when the vehicle was moved in the reverse direction by the driver is an absolute bogus case and is created only to ensure recovery of compensation from the Insurance Company. Needless to mention that all involved including the driver of the vehicle helped in the venture. However, we believe the findings in the final report submitted by the Police which is strengthened by the delay in filing of complaint itself and we, therefor, hold that the accident occurred while marble was unloaded from the stationary lorry.

3. Even though we have found part of the case put forward by the appellant against him, we still feel the ground on which MACT declined compensation is not tenable because MACT decided the case against the appellant only because the accident took place in a private premises i.e., in the house compound. Counsel for the appellant relied on decisions of this Court in *Nazeema v. Sebastian* 1987 (1) KLT 370, *United India Insurance Company v. Pierce Leslie India Ltd.* 2000 (1) KLJ 460) and *Alias Vs. Paul*, . In one case this Court held that when entry of transport vehicle is permitted in a factory premises, such premises constitute a "public place" for the purpose of liability for compensation payable by the Insurance Company u/s 147 of the Motor Vehicles Act. Similarly in the other two cases this Court held that road leading to a stone quarry and workshop premises can be treated as public place for the purpose of Section 2(34) of the Motor Vehicle Act. Section 2(34) of the Motor Vehicle Act defines public place as follows:

"Public place" means a road street way, or other place, whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage.

From the above we are of the view that public place does not have a restricted meaning in as much as it is not to be taken as a place where public have uncontrolled access at all times. "Public place" for the purpose of the Act has to be understood with reference to the places to which a vehicle has access. It is specifically mentioned in the definition that any place of stand at which passengers are picked up or set down by a stage carriage is a public place. While this applies to vehicles carrying passengers, the definition does not deal with places of access to goods vehicles. We are of the view that wherever goods vehicles are allowed entry, the workers engaged in loading, unloading and the crew also have access. In this case the person involved is a headload worker and

obviously he has a right of access to the place for his work, though he is not a crew member or a regular employee of the vehicle. While this is a case of truck allowed inside the house compound where construction was carrying on, for the purpose of unloading of goods, several godowns provide access to goods vehicles and headload workers so that loading and unloading from vehicles are done in the godowns. Obviously construction sites, godowns etc. are not places where public have uncontrolled right of access. However, access is provided to employees, crew members of goods vehicles, loading-unloading workers etc. for the purpose of carrying out their work involving use of the vehicle. Unless places like this where restricted entry is permitted to specified class of people for the purpose of handling goods in the form of loading and unloading of goods are treated as public places, the very purpose of insurance coverage u/s 147 of the Act will be defeated. It is clear from Section 147 that liability under the policy is not restricted for accident taking place on public roads. On the other hand, instead of using public road, the coverage under the policy is for accidents taking place in public place which in our view, has a wide meaning covering private places of the kind referred above where restricted access is provided to limited class of public which can be even for specific purposes. We, therefore, hold that the private premises of a house where goods vehicle is allowed entry, is a public place for the purpose of Section 2(34) of the Motor Vehicles Act which leads to liability for the Insurance Company subject to satisfying other conditions of the policy.

4. The next question to be considered is whether the appellant is entitled to compensation for the injury sustained while unloading goods from the stationary truck. Counsel has relied on decision of this Court in *New India Assurance Co. Ltd. v. Lakshmi* 2000 (3) KLT 80 whereunder this Court has held that injury sustained during the course of unloading goods is an accident taking place on account of use of the vehicle. The use of a transport vehicle obviously involves loading of goods, transporting the same and unloading the goods. All those engaged in loading and unloading are using the truck during such time. Therefore, any accident arising during loading and unloading will also be an accident arising on account of use of the vehicle. Therefore, the appellant's claim for compensation against the Insurance Company is maintainable because the accident arose on account of use of the vehicle and as already held by us, the accident occurred in a public place. However, the MACT has not considered the question whether the claim is maintainable u/s 166 of the Motor Vehicles Act because of its finding that there is no coverage under the policy as the accident took place in a private premises. Since we have found this issue in favour of the appellants, we have to necessarily remand the matter to the MACT for reconsideration.

5. However, we make it clear that the MACT should consider the case of the Insurance Company based on the final report of the Police Officer who conducted the investigation and found that accident took place while goods were loaded from stationary truck and the case put forward by the appellant that the accident

took place while vehicle was reversed by the driver is factually incorrect. The MACT is directed to examine the claim critically with specific reference to the final report of the Police and the belated private complaint filed by the appellant four months after the date of the accident. The appellant will produce copy of this judgment before the MACT for issuing notice to respondents and for adjudicating the matter afresh.