

(2017) 01 KL CK 0020
In the High Court Of Kerala
Case No : MFA. No. 69 of 2010

S. Gopakumar

APPELLANT

Vs

G. Chandran Nair

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2017) 2 KerLJ 64 : (2017) 1 KLT 1069 : (2017) 2 LLJ 351 : (2017) 2 TAC 645

Hon'ble Judges : Mr. K. Surendra Mohan and Mrs. Mary Joseph, JJ.

Bench : Division Bench

Advocate : P. Balachandran Nair and Sri. R. Nikhil, Advocates, for the Appellant; Sri. T.S. Harikumar, Advocate, for the Respondent No. 1; Sri. A.A. Mohammed Nazir, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Surendra Mohan, J.—This appeal is filed against an order of the Commissioner for Workmen's Compensation, Thiruvananthapuram dated 7.12.2009 in W.C.C. No. 67 of 2005. As per the order appealed against, though the appellant has been awarded compensation, the second respondent/Insurance Company has been held not liable to pay compensation to the appellant. The appellant is aggrieved by the exoneration of the Insurance Company.

2. The appellant is a worker, who is adept at boring or deepening of open wells. He was an employee of the first respondent. On 11.7.2003 at about 8.30 a.m. when the appellant was being conveyed to a work site at Kallara in a goods vehicle (mini lorry) owned by the first respondent, the vehicle skidded, the appellant was thrown off and he suffered serious injuries. The appellant sustained compound fracture of both the bones of his right leg. He was immediately rushed to the Medical College Hospital, Thiruvananthapuram and was treated there. Later on, he underwent a surgery on 13.10.2003 and a nail was implanted in his bones. Though he was discharged from the Hospital on

24.10.2003, he contended that he was totally disabled from doing the work in which he was engaged earlier. He was earning Rs.4,000/- per month at the time of the accident. He claimed compensation for the injuries suffered by him. According to his employer, the first respondent, it is the second respondent/ Insurer who is liable to pay the compensation amount. The appellant had approached the Workmen's Compensation Commissioner seeking the grant of compensation. The application was numbered as W.C.C. No. 67 of 2005 and was tried.

3. In his written statement, the first respondent admitted the employer-employee relationship as well as the accident that had occurred. He admitted that he was the owner of the vehicle involved in the accident. According to him, the vehicle had a valid insurance policy issued by the 2nd respondent. Therefore, it was contended that the compensation, if any, found payable was to be paid by the second respondent. He admitted the monthly salary of the appellant also.

4. The second respondent denied the employer-employee relationship between the appellant and the first respondent as on the date of the accident. According to the second respondent, the Insurance Policy was issued in the name of one B. Vikraman Nair, who was the owner of the vehicle. Since the first respondent was not the insured, it was contended that the second respondent had no liability to pay the compensation amount. The accident was not reported to the second respondent, nor was the vehicular documents produced for verification. The accident was also disputed. The contention that the appellant had suffered injuries was disputed, as also his case regarding loss of earning capacity.

5. The evidence in the case consists of the oral evidence of the appellant as AW1 and Exts. A1 to A5 documents. The first respondent did not adduce any evidence. The second respondent produced Ext.D1 copy of the Insurance Policy and examined DW1, its Assistant Manager as witness.

6. The Workmen's Compensation Commissioner framed four issues and considered the respective contentions. It was found that the appellant had suffered injuries in the accident and that he was entitled to a compensation amount of Rs.1,46,772/-. He was also held entitled to recover the said amount with interest thereon at 12% per annum with effect from the date of accident, 11.7.2003, to the date of payment. However, the second respondent was held not liable to pay the compensation amount on the ground that the appellant being a well digger and not an employee of the lorry, was not a person covered by the Insurance Policy. He was travelling in a goods vehicle that was not intended to carry passengers as per the policy conditions. Since there was violation of the policy conditions, it is held that he was not a person liable to be covered by the policy. The appellant is aggrieved by the said finding.

7. The question as to whether the Insurance Company could be permitted to disclaim liability on the ground that the vehicle had been transferred to another person without its permission, was the subject matter of reference to a Full

Bench of this Court along with various other cases in which a similar question had been raised. The Full Bench has by its judgment dated 21.1.2015, answered the reference holding that in view of Section 157 of the Motor Vehicles Act, 1988, (hereinafter referred to as "the Act" for short), once it is established by evidence in any proceedings that a vehicle had been transferred to a person other than the policy holder, the transferee owner would step into the shoes of the policy holder and that the Insurance Company would be liable to pay compensation for any injury arising out of an accident. Since the issue has been authoritatively decided by the Full Bench, the contention of the second respondent that it would have no liability to compensate the appellant for the sole reason that the vehicle had been transferred by the policy holder, Sri.B. Vikraman Nair, to the first respondent without the junction of the 2nd respondent has to be rejected. However, the contention put forward in the present case is that, in the absence of the original policy holder on the party array, no liability could be fastened on the 2nd respondent. It was incumbent on the appellant to have impleaded the original policy holder also as a respondent, it is contended.

8. As already noticed above, it has been laid down by the Full Bench that by virtue of the operation of Section 157 of the Act, upon transfer, the transferee of the vehicle would step into the shoes of the original policy holder. In other words, the transferee would get himself substituted in the place of the original policy holder. In the above view of the matter, we do not find any substance in the contention that the original policy holder ought to have been impleaded as a party to these proceedings. When the transferee of the vehicle steps into the shoes of the original policy holder, the latter becomes an unnecessary party to these proceedings. In the present case, Ext.A5, copy of the R.C. Book of the vehicle involved in the accident, shows that the vehicle had been transferred to the name of the first respondent and that he was the registered owner at the time of the accident. Therefore, by the operation of Section 157 of the Act, he has stepped into the shoes of the original policy holder. Consequently, the first respondent has become the policy holder, who is entitled to claim coverage of the policy.

9. In the above background, we shall consider the other contentions advanced by the parties. According to Adv. P. Balachandran Nair, who appears for the appellant, the appellant was an employee of the first respondent. He was being transported to his work site by the employer. Therefore, the accident had arisen during the course of his employment for which, the first respondent was liable to compensate him. The vehicle was covered by a valid insurance policy. Therefore, the second respondent was liable to pay the compensation amount. The Workmen's Compensation Commissioner seriously erred in absolving the second respondent of liability. Therefore, according to the counsel, the order appealed against requires to be interfered with to the extent of making the second respondent liable for the compensation.

10. Adv. A.A. Mohammed Nazir, who appears for the Insurance Company, on the

other hand disputes the employer-employee relationship between the appellant and the first respondent. However, since the first respondent has in his written statement, admitted the employer-employee relationship, it is not open to the second respondent/Insurance Company to advance the said contention. The same is therefore rejected.

11. A more serious contention advanced on behalf of the second respondent, that requires consideration, is regarding the liability of the Insurance Company to pay the compensation that has been awarded. According to the counsel for the Insurance Company, the appellant was admittedly travelling in a goods vehicle (mini lorry). A goods vehicle is not permitted to be used for transporting passengers. Therefore, the accident had occurred when the vehicle was being used for an unauthorized purpose. Consequently, it is contended that there has been a violation of the policy condition entitling the Insurance Company to disclaim liability. Though in the definition of a goods vehicle contained in Section 2(8) of the 1939 Act, passengers were included, the same has been omitted from the definition of "goods carriage" contained in Section 2(14) of the 1988 Act. Therefore, the legislature has in its wisdom, excluded the word "passengers" from the definition, making it clear that a goods carriage shall not be used for transporting passengers. Our attention has been drawn to Section 147 of the Act to point out that, the liability of the owner of a vehicle to take out an Insurance Policy extends to the passengers of a public service vehicle, but does not refer to passengers of a goods vehicle. In view of the above, according to the learned counsel, a passenger travelling in a goods vehicle is not liable to be compensated by the Insurance Company for an injury suffered by him in an accident that has occurred while he was so travelling. Learned counsel has placed reliance on a number of decisions of the Apex Court as well as this Court to drive home his contention that the passenger of a goods vehicle was not entitled to be compensated under the Insurance Policy.

12. It is true that the definition of "goods carriage" in Section 2(14) of the Act does not include a passenger. In fact, the definition makes it clear that, a goods carriage is a vehicle that is used "solely" for the carriage of goods. The above aspect has been settled by a number of decisions of the Apex Court also. However, in the present case, the appellant was not travelling as a passenger in the goods vehicle. He was an employee who was being transported to his work site. The proviso to Section 147 makes a distinction between an ordinary passenger and an employee who is being transported to his work site, though in the generic sense, they are both passengers. Section 147(1) is extracted hereunder for convenience.

"147. 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; and

(b) insures the person or classes of persons specified in the policy to the extent

specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a 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.

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

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

(ii) to cover any contractual liability.

Explanation.- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

13. A perusal of the proviso above shows that, a policy shall not be required to cover the liability in respect of the death or bodily injury of an employee arising out of and in the course of his employment other than the liability arising under the Workmen's Compensation Act, 1923 where it is in a goods carriage that he was being carried. The above provision makes an exception in the case of employees being carried in a goods vehicle, for the purpose of coverage under the provisions of the Workmen's Compensation Act. Therefore, though passengers in general of a goods vehicle are not liable to be covered, employees being carried in a goods vehicle are liable to be covered by the Insurance Policy. The above understanding of the proviso to Section 147(1) of the Act is supported by the dicta of the Apex Court also.

14. In *New India Assurance Co. Ltd. v. Asha Rani* ((2003) 2 SCC 223), the Apex Court had to consider the extent of the liability of an insurer to pay compensation under Section 147 of the Act. The changes brought about to the provision by the Motor Vehicles (Amendment) Act, 1994 also arose for consideration. The

question that arose for consideration in the said case was whether the insurer was liable to pay compensation to the owner of the goods or his authorised representatives carried in a goods vehicle. The Apex Court considered the effect of the changes brought about by 1994 Amendment Act to the provision, made a comparison of the provision with Section 95 of the Motor Vehicles Act, 1939 and analysed the scope of the provision and it has been held that even if the widest interpretation is given to the expression "to any person", it would not cover, either the owner of the goods or his authorised representative travelling in a goods vehicle, before the 1994 amendment. It was for the said reason that the said persons have been included by a specific amendment. In a concurring judgment S.B. Sinha, J., has held as follows in paragraph 25 of the judgment:

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage."

It is clear from the above dictum that, employees carried in a goods vehicle would be covered by the insurance policy with the only limitation that the liability would be limited to that under the Workmen's Compensation Act.

15. In *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy* ((2003) 2 SCC 339) the Apex Court again had to consider the liability of the Insurance Company to pay compensation in respect of gratuitous passengers carried in a goods vehicle. The Court considered the various provisions of the Act, compared the decisions under the 1939 Act, and held that the Insurer would have no liability for the coverage of a passenger travelling in a goods vehicle. Speaking for the Court, Arjit Pasayat, J., has summed up the scope of the liability of an insurer under Section 147, as follows:

"The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of "goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short "the WC Act"). There is no reference to any passenger in "goods carriage".

(Emphasis supplied).

16. It is therefore clear that though passengers of a goods vehicle are not liable to be covered under the Act, the provision stipulates compulsory coverage in respect of drivers and conductors of public service vehicles and employees carried in goods vehicles with the liability limited to that under the Workmen's Compensation Act, 1923.

17. Though the counsel for the Insurance Company has placed reliance on certain other decision of the Apex Court also, they are not applicable to the fact situation in the present case.

18. In *National Insurance Co. Ltd. v. Cholleti Bharatamma* (2009) 1 SCC 423 the claim was made on behalf of the deceased who had boarded the lorry and paid an amount of Rs.20/- as charges. The said person being a passenger, the Apex Court has held that the Insurance Company was not liable to pay compensation for his death.

19. In *National Insurance Co. Ltd. v. Baljit Kaur* (2004) 2 SCC 1) also, the victim, who was returning in a truck from a marriage ceremony was held to be a passenger who was not liable to be covered.

20. In *United India Insurance Co. Ltd. v. Suresh* (2008(4) KLT 552 (SC)), the claimant had hired a goods carriage vehicle and was travelling in it. It has been held that a hirer of a goods carriage was not liable to be compensated. Similarly, in *Thankachan T.K. v. O.U. Geevarghese* (2009 (1) KHC 699) a learned Single Judge of this Court has held that a passenger travelling in a tractor was not liable to be covered by the insurance policy. The claim in the present case is made by an employee who was being transported in a goods vehicle owned by the employer to his work site, who stands on a totally different footing. He is a person who has been specifically mentioned and included in the proviso to sub section (1) of Section 147. Therefore, we hold that the said person is liable to be covered by the insurance policy issued by the second respondent. In the present case, the compensation has been awarded under the provisions of the Workmen's Compensation Act, 1923. Therefore, the compensation awarded is a liability that has to be discharged by the insurer.

21. The counsel for the second respondent has raised a further contention that the compensation that has been determined by the Commissioner for Workmen's Compensation is wrong for the reason that no medical practitioner has certified the disability that is alleged to have been sustained by the insured. Reliance is placed on the decision of a Full Bench of this Court in *New India Assurance Co. Ltd. v. T.P. Sreedharan* (I.L.R. 1995(2) Kerala 107 (FB)). However, we are afraid that the said contention is only to be rejected. We notice from the records that the District Medical Officer, Thiruvananthapuram has issued a Disability Certificate to the appellant, certifying the disability suffered by him. The said Disability Certificate dated 20.12.2008 has been marked by the Commissioner for Workmen's Compensation as Ext.X1.

22. The above being the position, the appellant is entitled to succeed. Since no contention seeking enhancement of the compensation awarded was made before us, we confirm the compensation awarded by the Commissioner for Workmen's Compensation and modify the order appealed against to the limited extent of making the second respondent Insurance Company liable to pay the amount of compensation that has been awarded. The other terms for payment of the compensation amount as well as for recovery thereof in the event of non-payment, stipulated by the order appealed against shall remain unaltered.

Ordered accordingly.