
(2010) 11 KL CK 0287
In the High Court Of Kerala
Case No : M.A.C.A. No. 127 of 2004

Sulaiman

APPELLANT

Vs

Alipa

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Workmens Compensation Act, 1923 — Section 147, 149

Citation : (2011) ACJ 1762 : (2011) 1 KLT 496 : (2011) 2 TAC 595

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

Bench : Division Bench

Advocate : K.P. Mujeeb, for the Appellant; P.V. Jyothi Prasad, for the Respondent

Final Decision : Allowed

Judgement

A.K. Basheer, J.—This appeal is at the instance of the claimant in a petition filed u/s 166 of the Motor Vehicles Act 1988. The Tribunal quantified the compensation receivable by the Appellant at Rs. 3,90,100/- and held that the Appellant would be entitled to recover only Rs. 1,37,950/- from the insurer of the vehicle out of the said amount Appellant was directed to recover the balance amount of compensation from the driver and owner of the vehicle. The above award is under challenge in this appeal.

2. The case of the Appellant before the Tribunal may be briefly noticed:

3. On June 9, 1997, the Appellant was travelling in a lorry bearing registration No. KRP 3315 which was owned by Respondent No. 2 herein. He was travelling in the said lorry in his capacity as a "coolie worker". While the lorry was ascending a steep hill, Respondent No. 1, the driver, apparently lost control and the vehicle started to run backwards. The driver jumped out of the cabin leaving the Appellant helpless in the vehicle which capsized with the load of laterite stones. The Appellant sustained grievous injuries as he was trapped under the load of laterite stones. Appellant alleged that the accident occurred because of the rash

and negligent driving of the vehicle by the driver. Therefore he instituted the petition for compensation against the owner, driver and the insurer of the vehicle claiming a total sum of Rs. 10 lakhs, as amended later.

4. Respondent Nos. 1 and 2 in their statement denied the allegation of rash and negligent driving by the driver. According to these Respondents, the vehicle capsized while it was passing a culvert. They further contended that the compensation, if any, was liable to be paid by Respondent No. 3, the Insurance Company with whom the vehicle was insured.

5. In its written statement the Insurance Company disowned its liability contending that the Appellant who was admittedly travelling as a "loading coolie" in the goods vehicle was not entitled to get any compensation since the insurance policy was an "Act only" policy.

6. It came out in evidence that the Appellant was rendered "a total paraplegic as a result of fracture dislocation of T11/T12 vertebrae". The Medical Board attached to the District Hospital, Manjeri which issued Ext.X1 certificate further noted that the Appellant had suffered deformity at thoracolumbar region with "partial ankylosis of the hip, knee and ankle with loss of sensation below the T12 dermatome". Resultantly Appellant suffered urinary incontinence. The Board assessed that the Appellant had 70% permanent partial disability. In Ext.A3 certificate issued by Professor Dr. Thomas Joseph. M.S., former Head of Neurosurgery II, CMC Hospital, Vellore and now working as a consultant Neuro Surgeon at K.G. Hospital, Coimbatore certified that the Appellant had suffered fracture of T12 vertebra and was totally paralysed below the hip. The doctor further stated that the Appellant would be unable to travel and was very unlikely to get back to his original work.

7. The Tribunal after considering the medical evidence available on record accepted the percentage of disability as certified by the doctors. Appellant's monthly income was notionally fixed as 1800/- and applying a multiplier of 17 the Tribunal reckoned the compensation payable to him under the head of disability as Rs. 2,57,000/- The Appellant was also found entitled to get a sum of Rs. 50,000/- under the head of pain and suffering, " 50000 towards medical expenses and Rs. 21,600/- under the head of loss of earning. Thus the Tribunal quantified the compensation at Rs. 3,90,100/-.

8. However the Tribunal took the view that Appellant would be entitled to get compensation only as provided under the Workmen's Compensation Act since the policy issued by the Insurance Company in respect of the vehicle was an "Act only" policy. Therefore the Tribunal calculated the compensation payable under the Workmen's Compensation Act applying the relevant factor and reckoning the monthly income of the Appellant as Rs. 2,000/- and fixed the compensation payable to him at Rs. 1,37,950/-.

9. It is contended by learned Counsel for the Appellant that the view taken by the Tribunal is totally erroneous and unsustainable. The Appellant was

accompanying the goods (laterite stones) in the vehicle. There was no dispute that the Appellant was the only passenger in the vehicle other than the driver. He had travelled in the vehicle not only in his capacity as the head load worker who had loaded the goods in the vehicle, but also as the authorised representative of the owner of the goods. Therefore according to the learned Counsel, the contention raised by the Insurance Company that the Appellant was a gratuitous passenger cannot be accepted at all.

10. The clause pertaining to the liability of the Insurance Company under the Workmens" Compensation Act is primarily intended for coverage of risk of employees of the owner of the vehicle. Of course it will be open to the owner of the vehicle to cover the risk of additional number of workers under the Workmens" Compensation Act, if additional premium is paid. It is conceded by the learned Counsel that the owner of the vehicle had not paid any additional premium. But still the Appellant in his capacity as the representative of the goods was entitled to travel in the vehicle and the Insurance Company would be liable to pay the compensation even if it is only a statutory policy.

11. Per contra, it is contended by the learned Counsel for the Insurance Company that the Appellant was admittedly a head load worker. It is true that he was travelling in the vehicle after loading the goods in the same. But still he cannot be treated as an authorised representative of the owner of the goods, since even according to the Appellant he was engaged to load and unload the goods by the owner thereof. Thus it is contended by the learned Counsel that the Tribunal was justified in limiting the liability of the Insurance Company under the Workmens" Compensation Act.

12. In National Insurance Co. Ltd. Vs. Prembai Patel and Others,) the driver of a truck succumbed to the injuries sustained by him when it capsized while it was carrying a heavy load of firewood. Compensation was claimed by the legal representatives of the deceased victim. Sunder Singh, u/s 166 of the Motor Vehicles Act. The contention of the claimants was that the accident occurred because of the poor mechanical condition of the vehicle. But the owner and the Insurance Company denied the above allegation and contended that the accident occurred only because Sunder Singh was drunk while driving the vehicle. The Tribunal, though accepted the above contentions raised by the owner and the Insurance Company, nevertheless awarded a sum of Rs. 2,10,000/- to the claimants and directed the Insurance Company to pay the same.

13. The above award was challenged by the Insurance Company before the High Court, with a specific contention that its liability, if any, would be restricted to that which is provided under the Workmens" Compensation Act. The contention of the Company was that the owner of the vehicle had paid premium only to cover the liability qua an employee and therefore the liability of the Company would be restricted to that extent only. The High Court however accepted the plea of the claimants and held that the accident occurred because of the poor mechanical condition of the vehicle.

14. The question that came up before the Apex Court was whether the Appellant would be liable to pay the entire amount of compensation awarded to the claimants or its liability would be restricted to that which was prescribed under the Workmens" Compensation Act. Their Lordships after noticing the various provisions contained in Sections 147 and 149 of the Act and also some of the decisions rendered by the Apex Court on the point held that the liability of the Insurance Company would be restricted to that under the Workmens" Compensation Act only, especially since the policy taken by the owner was only for "Act liability". However the Apex Court did not interfere with the quantum fixed in the case.

15. It may at once be noticed that Sunder Singh was admittedly an employee of the owner of the truck. The accident had occurred in the course of employment. The Apex Court noticed the policy particulars issued by the Company in respect of the vehicle which provided that the limitation of its use was "for act only cover". The owner had paid Rs. 1245/- towards premium for "act liability" only.

16. The relevant entries as regards payment of premium in Ext.B1 policy in the case on hand are extracted hereunder:

Basic premium - 1245 L/L to persons employed in connection with the operation & maintenance loading or unloading - 30 TPPD unlimited - 75 _____
1350 _____

17. Obviously, the owner of the vehicle in this case, in which the Appellant was travelling on the ill-fated day, had paid additional premium to cover certain other risks including that of the workers engaged for loading and unloading. Therefore it will be futile for the Insurance Company to contend for the position that its liability is restricted to "act only liability".

18. A perusal of the relevant entries available in the policy extracted above will show that additional premium was paid in respect of "persons employed in connection with the operation and maintenance, loading or unloading". Therefore the view taken by the Tribunal that the liability of the Insurance Company would be limited to the one as envisaged under the Workmens" Compensation Act cannot be sustained at all. After accepting additional premium under the head referred to above, the Insurance Company cannot escape from the liability to indemnify the owner of the vehicle. The Tribunal was therefore not justified in restricting the liability of the Insurance Company to one under the Workmens" Compensation Act only.

19. As has been noticed already, the Appellant had admittedly loaded the laterite stones in the vehicle. He was accompanying the goods in the vehicle to its destination where he was under aft obligation to unload the said goods.

20. Therefore having regard to the facts and circumstances of the case particularly to the additional premium paid by the owner of the vehicle, we are satisfied that the Insurance Company has to be directed to pay the entire

compensation to the Appellant/claimant. The impugned award is modified to the above extent.