(2003) 03 KL CK 0096

In the High Court Of Kerala

Case No : M.F.A. No.702 of 1996 C

The Divisional Manager, The Oriental Insurance Co. Ltd. APPELLANT

Vs

Babukuttan, Madhavan Pillai K. and Thulaseedharan Pillai RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2003) 03 KL CK 0096

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

Bench : Single Bench

Advocate : Mathews Jacob, for the Appellant; Asok M. Cherian, for R1 and T.V. George, for R2, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The insurer is the appellant. It is contended that the claimant was a passenger in a goods vehicle. The accident occurred on 6.3.1992, long before the amendment to Section 147(1)(b)(i) of the Motor Vehicles Act, 1988 covering the owner or the representative of the owner of the goods within an act policy. Therefore, the insurer shall be absolved of the liability in the light of the decision in New India Assurance Co. Ltd. v. Asha Rani and Ors. (JT 2002 [10] SC 161).

2. A reading of the award discloses that the injured was a headload worker. He was carried in the vehicle. The owner of the vehicle had taken the goods in his vehicle to a destination where it has to be unloaded. There is no evidence to show that the owner of the goods had been accompanying. Necessarily, the owner of the vehicle had taken the goods for transportation. It is his duty to unload the goods to the place of destination, where it had to be unloaded. So, he has to employ a workman in that regard. Admittedly, being a goods vehicle, upto 5 workers are covered in an Act only policy, going by the proviso to Section 147(1) of the Act. In the absence of the owner of the goods, if the owner of the vehicle has employed such workman for unloading purpose, necessarily, it has to be taken that he was being carried in the vehicle for unloading purpose.

Therefore, he was covered by the policy. Therefore, the appellant''s contention cannot be accepted.

3. But the appellant is well justified in its contention that the appellant will be liable to pay compensation only in terms of the Workmen''s Compensation Act, 1923. The claimant as aged 21 years. As on the date of accident the income that has to be taken is Rs. 1000 with a wage factor of 50%. The extent of disability proved was 4%. There is no question of taking the extent of loss of earning capacity in excess of that, as nothing of that sort was proved. Necessarily, the compensation payable shall be computed as:

1000 x 50 x 4 x 222.71 / 100 100 = Rs. 44542/-.

The insurer will be liable to pay that much amount with 6% interest. The balance amount shall have to be paid by the driver and the owner jointly.

Appeal is disposed of as above.

