(2007) 10 KL CK 0037

In the High Court Of Kerala

Case No : M.F.A. No. 191 of 2002

The Manager, Chulika Estate — APPELLANT

Vs

Kunjumohammed and Another — RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Citation : (2008) 116 FLR 911 : (2007) 4 ILR (Ker) 802 : (2007) 3 KLJ 652

Hon'ble Judges : Kurian Joseph, J;Harun-Ul-Rashid, J

Bench : Division Bench

Advocate : K. John Mathai, for the Appellant; K.J. Saji Isaac, for the Respondent

Final Decision : Allowed

Judgement

Harun-Ul-Rashid, J.—Order dated 19-9-2001 of the Commissioner for Workmen''s Compensation Kannur in W.C.C. No. 241/1998 is under challenge. The 1st opposite party is the appellant herein.

2. By the said order, the Commissioner allowed the application for compensation submitted by the 1st respondent directing the appellant to deposit an amount of Rs. 20,780/- within 30 days from date of receipt of the judgment of the Commissioner failing which revenue recover proceedings will be initiated to realise the said amount with 12% interest from the date of default. The 1st respondent/appellant was a workman under the appellant/1st opposite party. During his employment the 1st respondent sustained personal injuries. According to the 1st respondent during the course of his employment he met with an accident and his right hand little finger got injured and amputed. The fact that the 1st respondent sustained injuries on 9-12-1997 during the course of his employment is admitted by the appellant. The appellant contended that workers including the 1st respondent are covered by valid workmen''s compensation policy under the 2nd respondent insurance company. The 2nd respondent denied the accident, age occupation and monthly income of the 1st respondent as well as the insurance coverage of the estate employees.

3. Before the Commissioner for Workmen''s Compensation the 1st respondent was examined as AW1 and marked A1 to A4 series on his side. No oral or documentary evidence was adduced on the side of the opposite parties. After examining the oral evidence and the materials on record, the Commissioner found that the 1st respondent is entitled to compensation. The Commissioner also noticed the fact that in spite of providing sufficient opportunities the appellant failed to produce the insurance policy certificate. Accordingly the Commissioner directed the appellant to deposit the entire compensation amount.

4. In this appeal the counsel for the appellant contended before thi s Court that the appellant had taken valid insurance policy covering the 1st respondent and the Commissioner went wrong in absolving the 2nd respondent from their liability to compensate the 1st respondent. The 2nd respondent did not deny the fact that there is insurance coverage and a valid insurance policy. The only argument advanced by the counsel for the insurance company is that the terms of the insurance policy does not cover the liability to pay interest to the 1st respondent who sustained injuries.

5. Under the provisions of the Insurance Act an insured is liable to pay premium which is to be worked out in the manner provided for therein. To minimise the liability, the insurer and insured can agree to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Agreement regarding payment of interest by the employer, therefore is not prohibited in law. Workmen''s Compensation Act insisting on the insurer covering the whole liability arising out of an award towards compensation to a third party arising out of a motor accident. The claimant under the Act did not have the right to claim the payment of compensation in its entirety from the insurer himself. The Workmen''s Compensation Act enables the clamant to claim the compensation from the employer. The rights and obligations between the employer and the insurer would depend upon the terms of the insurance contract. From the terms of contract in this case, it is clear that the insurer has specifically excluded any liability for interest under the Workmen''s Compensation Act and confined its liability to indemnify the employer only against the amount of compensation ordered to be paid under the Workmen''s Compensation Act.

6. A contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute the parties are free to enter into a contract as for their own volition. Since the Act does not provide for a compulsory insurance the parties are free to choose their own terms of contract. The statute does not fix any liability on the insurance company. An insurance is a matter of contract between the insurance company and the insured. It is open to the parties to provide by contract that they will not take on liability for interest. In the Insurance Act there are no provisions corresponding to those in the Motor Vehicles Act, compelling the insurer to cover the entire liability arising out of an award towards compensation to a third party

arising out of a motor accident. No other provisions in any other law is noticed which stands in the way of an insurance company and the insured to enter into an agreement confining the obligation of the insurance company to indemnify to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen''s Compensation Act. Therefore we hold that the insurance company is not liable to pay the interest on the amount of compensation awarded by the Commissioner. The views taken by us finds support from the decision in New India Assurance Co. Ltd. v. Harshadbai Amratbhai Modhiya 2006 (2) KLT 667 (SC) & P.J. Narayan Vs. Union of India (UOI) and Others, .

7. The Commissioner held that the 1st respondent is entitled to Rs. 14,331/- as compensation and Rs. 6,449/- towards 12% interest. Thus the total amount payable by the appellant is fixed at Rs. 20,780/-.

Accordingly we allow the appeal. The order under appeal is modified. The liability of the insurance company is fixed at Rs. 14,331/- and the liability to pay interest at 12% awarded by the Commissioner shall be paid by the appellant which is fixed by the Commissioner at Rs. 6,440/- along with interest at the rate of 12% on the aforesaid amount from the date of default till payment.