(2011) 07 KL CK 0129

In the High Court Of Kerala

Case No : M.A.C.A. No. 548 of 2009

Ulahannan Mathew and Aleyamma	APPELLANT
Vs	
V.H. Mohammed Hamsa, Jacob Thomas '' Jaimon and The National Insurance Co. Ltd.	RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1)
Workmens Compensation Act, 1923 — Section 4(1)

Citation : (2011) 07 KL CK 0129

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Mathew John K, for the Appellant; Joe Kalliath, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—The claimants are the Appellants. They are the father and mother respectively of a person who suffered injuries in a motor accident which took place on 8/5/2006 and succumbed to those injuries later on 22/5/2006. It is the case of the Appellants that the deceased was employed as a Cleaner in the lorry. While he was attending to the work as a Cleaner outside the vehicle, the driver of the lorry negligently took the lorry forward leading to fall of a log of wood from the lorry which fell on the deceased leading to his injuries and subsequent death. Compensation was claimed against the owner, driver and insurer of the vehicle. Respondents 1 and 2 i.e., the owner and driver of the vehicle respectively did not appear and resist the claim. The 3rd Respondent/insurer resisted the claim. Inter alia, it was contended that the deceased was the owner-cum-driver of the lorry. It was conceded that the vehicle was covered by a comprehensive policy of insurance. However, the insurer claimed absolution from liability on the plea that the deceased was the owner at the relevant time as also the driver.

2. Parties went to trial on these contentions. The Tribunal in the impugned award came to the conclusion that the deceased was not the owner of the vehicle. The

Tribunal found that the liability in respect of the deceased was covered by the policy of insurance; but proceeded to hold that inasmuch as the insurer is not shown to have kept the relevant employment records showing that the deceased was an employee of the insured, there was violation of conditions in IMT 39 by the insured/owner. Consequently, it was found that the insurer is not liable to pay any amount of compensation. The award directed the owner and driver of the vehicle to satisfy the direction to pay the compensation. Compensation was fixed at Rs. .4,31,400/- along with costs of Rs. .6,450/-. Interest at the rate of 9% per annum was ordered from 1/1/07 till the realisation.

3. It is not actually unnecessary to advert to the various other disputes between the parties. The quantum of compensation fixed by the Tribunal is not challenged by any one. The direction to Respondents 1 and 2 - owner and driver, to satisfy the award is also not disputed or contested by any one. It is only the claimants, who have come up in appeal and according to the claimants, their grievance is that the insurance company must have been made liable to pay the entire amount. This is the only question falling for our consideration now.

4. We have heard the learned Counsel for the Appellants/ claimants and the learned Counsel for the insurance company. The other Respondents are not represented before us in this proceedings.

5. The learned Counsel for the Appellants contends that the Tribunal erred grossly in coming to the conclusion that the insurance company can claim absolution from liability on the ground that the conditions in IMT 39 of the policy of insurance have not been complied with. The Tribunal had taken the view that the employer had not maintained records/registers showing the details of the employees as insisted by the said conditions in IMT 39.

6. The learned Counsel for the Appellants, first of all, contends that this is a contention not justified by the pleadings. The insurance company, though it had claimed absolution from liability on other grounds had never raised a contention that conditions in IMT 39 regarding maintenance of employment records have been violated by the owner/insured.

7. We find this contention to be absolutely justified from the pleadings raised. We must particularly note that there is no dispute that the deceased was employed in the vehicle. The very definite case of the insurer was that the deceased was the driver of the vehicle (and also the owner of the vehicle). That was the short plea. At any rate, the fact that he, at the relevant time, was employed, in whatever capacity, in the vehicle was not disputed. Therefore, the learned Counsel contends that the rejection of the claim against the insurer on the ground that the employment records had not been maintained is not justified at all. The presence of the claimant as an employee in the vehicle (whoever be the employer) having been admitted by the insurance company, the insurance company cannot now be heard to contend that the liability of the insurer can be avoided on the ground that employment records have not been produced,

contends counsel.

8. We agree with the learned Counsel for the Appellants. The employment of the deceased in the lorry has not been disputed. The alleged violation of the conditions in IMT 39 regarding non-maintenance of employment records, which plea was not even raised, is, according to us, of no avail and cannot help the insurance company to avoid liability. We agree with the learned Counsel for the insurance company that the deceased, an employee employed by the owner, though outside the vehicle at the time of the accident, does not cease to be an employee and cannot be reckoned as a third party. He was continuing as an employee and was attending to work as an employee admittedly at the time of the accident.

9. The learned Counsel for the insurance company contends that no additional premium has been collected by the company to cover the liability of the employees entirely. Only the liability under the Workmen''s Compensation Act stands covered and that is covered not by any contractual stipulation between the parties; but because of the mandatory provisions of Section 147 of the M.V. Act.

10. We find merit in this contention. Our attention has not been drawn to any material which can suggest that in respect of the employees employed in the vehicle there was any collection of premium to cover any liability other than the statutory liability under the Workmen''s Compensation Act stipulated under proviso (i)(c) of Section 147(1) of the M.V. Act. The vehicle was a goods carriage. The deceased was an employee who was being carried in the vehicle and therefore liability under the Workmen''s Compensation Act of such an employee is covered under the proviso (i)(c) of Section 147(1).

11. Even though the learned Counsel for the Appellants initially attempted to dispute this assertion, nothing has been placed before us to show that the policy covers any liability in respect of the employees employed other than the liability under the Workmen''s Compensation Act.

12. The learned Counsel for the Appellants submits that, at any rate, the insurer cannot be absolved from the liability to pay such amount that is due under the Workmen''s Compensation Act. We accept the contention of the learned Counsel for the Appellants on this score. Respondents 1 and 2 shall be liable to pay the entire amount of compensation. But out of such liability, the insurer will be liable to indemnify the owner only in respect of the liability covered under the Workmen''s Compensation Act.

13. What then is the liability under the Workmen''s Compensation Act? That is the next question to be considered. The deceased is said to be a Cleaner. According to the insurer, he was a driver. Either way, liability in respect of the deceased is covered under proviso (i)(c) of Section 147(1) of the Motor Vehicles Act. The monthly earnings of the deceased as accepted by the Tribunal is Rs. .3,000/-. u/s 4(1)(a) of the Workmen''s Compensation Act, the liability under

that Act in respect of deceased persons aged 24 years (as accepted by the Tribunal) is as follows:

Compensation = Rs. .3,000/- x 50/100 x 218.47 (relevant fact) = Rs. .3,27,705/-

The insurer will be liable to pay the said amount along with proportionate interest and cost. The balance amount shall be paid and discharged by Respondents 1 and 2.

14. In the result:

a) This appeal is allowed in part;

b) Direction to Respondent No. 1 to pay the amount of.

Rs. .4,31,400/- (Rupees Four lakhs thirty one thousand and four hundred only) along with interest at 9% per annum from 01.07.2007 till realisation along with costs of Rs. .6,450/- (Rupees Six thousand four hundred and fifty only) is upheld;

c) There shall be a further direction that Respondent No. 3 shall satisfy the award to the extent of Rs. .3,27,705/- (Rupees Three lakhs twenty seven thousand seven hundred and five only) along with interest as directed above and proportionate costs;

d) All other directions of the Tribunal are upheld.