
(1980) 04 KL CK 0005
In the High Court Of Kerala

United India Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Kamalakshi and Others	RESPONDENT

Date of Decision : 15-04-1980

Acts Referred:

Employees Compensation Act, 1923 — Section 14, 19, 30, 31
Motor Vehicles Act, 1988 — Section 94, 95, 96

Citation : (1982) ACJ 274 : (1980) 2 ILR (Ker) 216 : (1980) 2 LLJ 408

Hon'ble Judges : K.K. Narendran, J;G. Viswanatha Iyer, J

Bench : Division Bench

Judgement

Viswanatha Iyer, J.—This is an appeal filed by the fourth respondent u/s 30 of the Workmen's Compensation Act. The applicant--first respondent here--is the widow of one deceased Gurunathan who was working as a cleaner in lorry No. KLQ. 1084. On 26th February, 1974 while Gurunathan was working in the lorry the lorry met with an accident and as a result of it Gurunathan sustained a fatal injury. Though he was immediately rushed to the Medical College Hospital he succumbed to the injuries in a few minutes of his reaching the hospital. The widow filed an application claiming compensation for the death of Gurunathan and she impleaded the second respondent herein alone as the respondent alleging that the lorry belonged to the second respondent and the deceased was employed by him as a cleaner. The second respondent disclaimed all liability to pay compensation. He contended that the deceased Gurunathan was never employed in his lorry as a cleaner. Long prior to the accident, on 7-11-1973 he had sold the lorry to the fourth respondent, wife of the third respondent, and the lorry was given possession to them without any of its employees. So at the time of the accident the fourth respondent was the owner. Further the lorry had been insured with the Madras Motor and General Insurance Co. Ltd. and the compensation, if any, for the death of Gurunathan has to be paid either by the insurance company or by respondents 3 and 4. The second respondent also requested that notice may be issued and these persons impleaded as additional parties. On receipt of notice the third and fourth respondents disclaimed all

liability for paying compensation because at the time of the accident the second respondent alone was the owner of the lorry. According to them the third respondent was appointed as a driver of the lorry by the second respondent and at the time of the accident the third respondent was its driver. It is also stated that Gurunathan was employed as cleaner in the lorry and he met with his end as a result of accident arising out of and in the course of employment on 26-2-1974. They denied that the lorry was owned and possessed by the fourth respondent at the time of the accident. The appellant, namely, the insurance company filed a written statement disclaiming all liability to pay the compensation.

2. The Commissioner found that the deceased was at the time of the accident an employee of the second respondent, that he met with an accident in the course of the employment, that the second respondent was the owner of the lorry at that time and since the lorry had been insured under Chapter VIII of the Motor Vehicles Act the appellant cannot escape liability to pay compensation for the death of Gurunathan. The compensation was fixed at Rs. 8,000 on the basis that the monthly wages of the deceased amounted to Rs. 250. This amount was directed to be paid by the second respondent and the appellant-company was also held liable on the basis of the insurance policy to pay this amount. It is against that this appeal has been filed by the insurance company.

3. Though the appellant in his memorandum of appeal had challenged the findings of the Commissioner that the deceased was employed by the second respondent, that he met with an accident in the course of the employment and that the lorry was owned by the second respondent at the time of the accident, these findings being findings of fact legally based on evidence they are not open to challenge in this appeal. So the only point urged by the appellant's counsel was that the Commissioner has no jurisdiction to pass an order making the appellant liable for the amount awarded as compensation to the first respondent. According to the learned Counsel the appellant is only the insurer and the first respondent has no right to claim this amount under the contract of insurance from the appellant. He also urged that the appellant will be statutorily liable on the insurance policy only if the owner of the vehicle is an insolvent and since there is no such case the Commissioner has no jurisdiction to order the appellant to pay the amount of compensation to the first respondent. In support of it he referred to Section 14 of the Workmen's Compensation Act and also a Division Bench decision of this Court in *New India Assurance Co. v. Parameswari Amma* (1976) KLT 203. This argument is not sound. No doubt in the above decision the scope of Section 14 of the Workmen's Compensation Act was considered and it was held that the right under the Insurance policy gets transferred to the employee or his dependent, only on the insolvency of the employer. The jurisdiction of the Commissioner being limited, in that he could go into the question of the employer's liability only, it was observed that the liability of the insurer under the insurance policy cannot be adjudicated upon by the Commissioner, But in that case their Lordships expressly left open the question

as to whether the employee or his dependent can rely on the provisions of Chapter VIII of the Motor Vehicles Act and whether the Commissioner can legally direct the insurer to pay the amount under that Chapter.

4. The question whether the Commissioner for Workmen's Compensation can in the case of Motor accidents order the insurance company to pay the compensation adjudged in the proceedings taken by the applicant depends on the provisions of the Workmen's Compensation Act read along with Chapter VIII of the Motor Vehicles Act. When the Workmen's Compensation Act was enacted in 1923 there was no provision for statutory insurance of the employer. That is why in that Act the workman is given a right to proceed against his employer even though liability is an absolute liability and not fault-based liability which is fastened on the employer. Section 3(1) has enacted that if a personal injury or death is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of that Chapter. Section 3(5) further enacts that nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other person. It is also therein provided that no suit for damages is maintainable by a workman in any court of law in respect of any injury if he has instituted a claim to compensation in respect of the injury before a Commissioner, Section 19(1) provides--

19(1) If any question arises in any proceedings under the Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature of extent of disablement), the question shall, in default of agreement be settled by a Commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a commissioner or to enforce any liability incurred under the Act.

Under Section 31 the Commissioner can recover as arrears of land revenue any amount payable by any person under the Act. From the aforesaid scheme it is clear that the Workmen's Compensation Act provides for absolute liability of the employer in case of accidents arising out of and in the course of the employment of the workman. Section 19 constitutes the Commissioner as the sole authority to determine this liability of the employer and to enforce that liability incurred under the Act. The civil Court's jurisdiction is totally excluded from this liability. Section 19(1) is wide enough to confer jurisdiction on the Commissioner to determine a question arising in any proceeding under the Act as to the liability of any person to pay compensation. It is not restricted to determination of the liability of employer alone.

5. Now let us consider the statutory provisions introduced by Chapter VIII of the Motor Vehicles Act. Before this Act was amended in 1956, the third party risk

was really the road insurance risk and the employee risk was only voluntary unless notification was issued. After 1956 amendment the use of a motor vehicle by any person in a public place without an insurance against third party risk complying with the requirements of Chapter VIII is prohibited in mandatory terms. Section 95 Sub-sections, (1) and (2) lay down the requirements to be complied with in an insurance policy taken in accordance with Chapter VIII for the use of a particular vehicle. In general terms they provide that the policy must be one which insures against any liability in respect of death or bodily injury to any person by or arising out of the use of the vehicle in a public place. It further specifies the person or persons who is or are given the right to enforce against the insurer the undertaking which the policy gives. Certain liabilities which because of the use of the words "death or bodily injury" to a person would otherwise have to be insured against, are taken out by the proviso to Section 95(1)(b). Proviso (i) exempts from the requirements of insurance cover the liability in respect of death or bodily injury arising out of and in the course of the employment of the employee. Proviso (ii) exempts from the requirements of insurance cover the liability in respect of death or bodily injuries to persons carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which the claim arises. The proviso without the exemptions or savings from their operation, thus state that compulsory insurance need not be effected against liability to voluntary passengers or against liability to persons who would have a claim against the insured as their employer. But there is a saving clause introduced to proviso (i). The liability arising under the Workmen's Compensation Act in respect of three classes of employees are exempted from this proviso. They are (1) an employee driving the vehicle, (2) conductors and ticket examiners in the case of public service vehicles, and (3) an employee carried in the goods vehicles. So far as they are concerned the insurance cover is compulsory. Therefore, in all such cases there is also statutory insurance coverage so far as the employees' risk under the Workmen's Compensation Act. In respect of all these risks Section 95(5) provides that a person issuing a policy of insurance u/s 95 shall be liable to indemnify the person or class of persons specified in the policy in respect of any liability which the policy would cover. It follows the insurer can no longer urge that it is not bound to indemnify a person or class of persons specified in the policy in respect of any liability which the policy purports to cover.

6. Section 96(1) lays down the duty of the insurer to satisfy the judgment against the person insured by the policy in respect of the liability the policy purports to cover. Section 96(6) provides that no insurer to whom notice has been given shall, except as provided u/s 96(2), be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) otherwise than in the manner provided for in Sub-section (2). Section 96 is, therefore, enacted in the widest terms laying down statutory duty of the insurer to satisfy the judgment obtained against the person insured. If, therefore, the statutory policy is thereunder Sections 94 and 95 of the Motor

Vehicles Act which has not only undertaken the road insurance risk but also limited employer's liability under the Workmen's Compensation Act in view of this compulsory scheme, the insurer would be bound to satisfy the judgment in respect of even this absolute liability under the Workmen's Compensation Act. The expression "judgment" in Section 96(1) and the term "Court" in Section 96(2) are to be understood according to the nature of the liability and the nature of the forum. If it is absolute liability under the Workmen's Compensation Scheme, the judgment would be that of the Commissioner, if it is fault-based liability on the ground of negligent action, the judgment would be of the Motor Claims Tribunal created under the Motor Vehicles Act, or if no such Tribunal is created, it would be the civil Court. Therefore, whichever may be the Court or authority which determined the liability of the insured in such motor vehicles accident, if the judgment is in respect of such liability which is required to be covered by the policy u/s 95(1) that judgment must be satisfied by the insurance company. Therefore, it is obvious that Section 96(1), (2) and (6) are to be read, by the express mandate of the Parliament, even into the Workmen's Compensation Scheme in respect of Motor Vehicle Accidents.

7. If, as in this case, an application is made under the Workmen's Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act, jurisdiction to decide any question as to the liability of any person to pay compensation. The insurer's liability to indemnify the insured and satisfy the judgment is covered by the "liability of any person". Section 19(2) further provides that the enforcement of that liability can only be by him. This is further clear from Section 96(2) of the Motor Vehicles Act. Before the insurance company is called upon to pay the amount, notice of the proceedings is required to be given to it as provided for in Section 96(2) of the Motor Vehicles Act. The insurer is entitled on receipt of that notice to take part in the proceedings and defend against the claim on the limited grounds provided in Section 96(2). Unless the authority before whom the objection is taken has power to decide the objection taken by the insurer an absurd result will follow. There will be no forum for adjudication. That is not the case. The forum is the Commissioner and his jurisdiction is wide enough to cover this as the language of Section 19(1) implies. He can decide the tenability of the objection and if the insurer fails, the consequential direction of the Commissioner to the insurer to pay is also covered u/s 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurance company u/s 31. In the light of Section 19 read along with Section 31 the order of the Commissioner can never be challenged as being without jurisdiction. I am supported in this conclusion by the decision of the Gujarat High Court in *N.I. M.O. Insurance Co. v. M.S. Solanki* (1974) Labour and Industrial cases page 72, followed by a Division Bench of this Court in *Oriental Fire & General Insurance Co. v. Gopalakrishna Pillai* (1978) K.L. T. 773.

8. In this case the deceased was a cleaner employed by the second respondent and was being carried in the vehicle in the course of his employment at the time

of the accident. So the insurance policy taken under Chapter VIII of the Motor Vehicles Act covers his case. The insurance company is duty bound u/s 96(1) of the Motor Vehicles Act to pay the amount awarded as compensation by the Commissioner. u/s 19(1) the jurisdiction of the Commissioner is wide enough to decide the question of liability of the insurance company to pay compensation. Therefore, the order passed by the Commissioner is perfectly valid.

9. In the result the appeal fails. It is dismissed with costs.