(2022) 11 KL CK 0238

In the High Court Of Kerala

Case No : MACA Nos. 1522 Of 2016, 3354 Of 2021

United India Insurance Company Limited — APPELLANT

Vs

Arun — RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)(b), 147(2), 167

Citation : (2022) 11 KL CK 0238

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Mathews Jacob, P.Jacob Mathew, Sheji P.Abraham

Final Decision : Dismissed

Judgement

P.V.Kunhikrishnan, J.

1. These two appeals are filed against the award passed in O.P.(MV) No.136/2005 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. M.A.C.A. No.1522/2016 is filed by the 3rd respondent in O.P.(MV) No.136/2005 and M.A.C.A. No.3354/2021 is filed by the petitioners in that claim petition. (Parties are hereinafter mentioned in accordance to their rank before the Tribunal).

2. Petitioners are the legal heirs of the deceased in a motor accident occurred on 18.02.2013. The deceased was engaged in loading of granite from a granite quarry at Mannur into the tempo bearing registration No.KL-07/G-5758. The lorry was parked by the 1st respondent driver at the place of occurrence. At that time somebody was engaged in cutting a big njaval tree and the said tree fell down into the platform of the tempo where the deceased was standing and he sustained fatal injuries and he was immediately taken to Medical College Hospital, Kolenchery but he succumbed to the injuries on the same day. Respondents 1 and 2 remained ex parte and the 3rd respondent insurance company filed a written statement. On the side of the petitioners, PWs 1 to 3

were examined and Exts.A1 to A5 were marked. Ext.X1 is the CD file, Ext.X1(a) is the case diary and Ext.X1(b) is the copy of the charge sheet in the C.D. file. After going through the evidence and documents the Tribunal dismissed the same finding that the petitioners have failed to establish negligence on the part of the 1st respondent driver.

3. Aggrieved by the same, the petitioners filed M.A.C.A.No.2388/2009 before this Court. This Court allowed that appeal as per judgment dated 29.07.2015 and was pleased to set aside the award and remanded the case for consideration by the Tribunal for fixing the quantum of compensation and allied matters like liability of owner and insurer.

4. Based on the remand order, the Tribunal again considered the matter and found that the insurance company is liable to indemnify the owner and also found that the petitioners are entitled for an amount of Rs.11,42,250/- as compensation with 9% interest per annum from the date of petition till realisation. Aggrieved by the quantum of compensation, M.A.C.A No.3354/2021 is filed by the petitioners. Aggrieved by the finding regarding the liability, the 3rd respondent insurance company filed M.A.C.A.

5. Heard the learned Senior Counsel Sri.Mathew Jacob, who appeared for the 3rd respondent insurance company instructed by his retaining counsel and Advocate Sheji P.

6. The Senior Counsel submitted that the insurer is not liable to indemnify the owner in respect of the entire compensation fixed, i.e., more than what is payable under the Workmen's Compensation Act. According to the Senior Counsel, the insurance company collected an additional premium of Rs.25/- towards workmen's compensation liability to one employee. It is the case of the insurance company that the deceased who was engaged in loading and unloading goods is covered under the Workmen's Compensation Act. It is also contended that though under Section 167 of the Motor Vehicles Act an option is given to file claim either by invoking the powers under the provisions of the Motor Vehicles Act or under the Workmen's Compensation Act. It is argued that the liability of the insurer will be only under the provisions of the Workmen's Compensation Act if it is established that the deceased injured was an employee of the insured. The Senior Counsel submitted that the petitioners are entitled an amount of Rs.3,79,120/- with interest at the rate of 12% per annum from the date of accident and also Rs.2,500/- towards funeral expenses under the Workmen's Compensation Act.

7. The counsel for the petitioners submitted that the Tribunal considered all the aspects and found that the petitioners are entitled compensation and there is nothing to interfere with the same. The counsel takes me through the endorsement IMT 39 as stated in Ext.B1 and submitted that the person employed in loading and unloading is also in the service of the insured. The counsel also relied on the judgment of this Court in Sulaiman v. Alipa [2011 (1)

KLT 496] and the decision in Sasikumar v. Lakshmanan [2016 (1) KLT SN 41(C.No.40)]. The counsel also relied on the judgment of the Apex Court in Ramachandra v. United India Insurance Co. Ltd. [2013 (3) KLT SN (85) (C.No.87) SC]. It is also the case of the petitioners that the quantum of compensation awarded by the Tribunal is too low.

8. This Court considered the contentions of the petitioners and the insurance company. This is the second round of litigation in this case to this Court.

9. In the first round of litigation, this Court remanded the matter to the Lower court with specific findings. It will be better to extract the relevant portion of the judgment dated 29.07.2015 in M.A.C.A. No.2388/2009:

"11. In this case, the accident occurred while the deceased was engaged in loading granite. The course of employment and the casual relationship between the use of the motor vehicle and the accident has therefore been established. What is required is only to show there is casual connection and even if it is not direct proximate, it can be safely concluded that the accident arose out of the use of the lorry which was parked for loading. The final report submitted by the Police shows that the deceased was loading granite and one Eldo was cutting a njaval tree standing on the top of the quarry, which fell down on the deceased.

12. In the light of the above legal position, the view taken by the Tribunal is wrong and therefore we reverse the same. We hold that the liability is on the part of the driver and owner of the vehicle. Then the next question is regarding the quantum of compensation. Obviously, it was not assessed by the Tribunal. The learned counsel for the appellants pleaded that since it is an old case, this Court may decide the quantum, whereas the learned counsel for the Insurance Company submitted that various aspects will have to be considered by the Tribunal. It is submitted that the question will be whether the Company is liable to indemnify the owner in respect of entire compensation fixed i.e. more than what is payable under the Workmen's Compensation Act.

13. Our attention was invited by the learned counsel for the appellant to the copy of Policy available in the C.D.file. The face page shows that endorsement 39 is also there. IMT 39 under Indian Motor Tariff is extracted herein below :

"Legal liability to persons employed in connection with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles.

(For GOODS VEHICLE)

In consideration of the payment of an additional premium of --- it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act,1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the --- and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.”

14. Our attention was invited to the above specific provision in IMT. The issue therefore will be whether the Insurance Company will be liable to meet the entire liability. On this question since the Tribunal has not entered any finding, we deem it fit to remand the matter for consideration by the Tribunal. Since it is an old case, it will be disposed of expeditiously as the claimants are widow, minor children and mother of the deceased who are yet to receive the quantum.

15. Accordingly, the award is set aside and the matter is remanded for consideration by the Tribunal for fixing the quantum of compensation and allied matters like liability of owner and insurer. The parties will appear before the Tribunal on 24.08.2015 and the Tribunal will take every endeavour to dispose of the matter within a period of three months.

The Registry will send back the records to the Tribunal forthwith.”

10. From the above judgment, it is clear that the jurisdiction of the Tribunal is only to find out the liability aspect and the quantum of compensation. The Tribunal considered the matter in detail and found that the insurance company is liable to pay the compensation. The Tribunal found that a person employed in loading or unloading while engaged in the service of insured is covered under the policy. The dispute raised by the insurance company with regard to this is that the deceased was not a person engaged by the insured. As rightly formed by the Tribunal, who all are the persons engaged in the service of the insured is not defined anywhere. The vehicle was used and the driver was engaged for the insured. Moreover, from a perusal of the endorsement IMT 39 in Ext.B1, it is clear that the loading and unloading employees are also covered. RW1 has stated that only in a package policy, loading and unloading workers are covered. However, the documents on record speaks that an additional premium of Rs.75/- was collected to cover the employees others 1. The Tribunal considered the matter in detail and rejected the contention of the insurance company. It will be better to extract the relevant portion of the impugned judgment.

“17. The counsel for the petitioners submitted argument notes stating all his contentions and it is his specific contention that the employee by the insured or his authorized agent itself is covered under the policy, since goods vehicles are used for paid service. Practically speaking, so far as a goods vehicle is concerned, the insured is not the person always in use of the goods vehicle, and all the employees need not be directly employed by him. What is the definition given to the term 'while engaged in the service of the insured' is not established by the parties or by any other evidence. In this juncture, counsel for the petitioner invited this Tribunal's attention to the decision rendered by our Hon'ble Supreme Court in General Assurance Society Ltd. v. Chandmull Jain and another reported in AIR 1966 Supreme Court 1644, where it was held that in case of ambiguity or doubt contract is to be construed contra proferentem that is against insurance company. It is observed in that decision that, in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract. Here in the case at hand, admittedly there is a policy and extra premium apart from the basic premium was paid so as to cover the employees engaged in loading and unloading work. The only question in dispute is whether the person is engaged in the service of the insured or not. On analyzing the facts and circumstances of the case, I am only to hold that the purpose of the very policy itself will be defeated if the loading and unloading worker is not covered, even though admitting for a moment that he is not employed by the insured directly. As stated earlier, it is highly difficult for all the loading and unloading workers to be directly employed by the insured at every time of the course of the employment. So adopting the principles and guidelines in the decision cited supra, and drawing the principles therein, I am constrained to hold and interpret the provisions of IMT No.39 as against the contentions raised by the counsel for R3. In view of the fact that an extra premium is being paid by the insured. I am to hold that the deceased employee is covered under the policy.

18. Though it is stated as per the terms of the policy that the compensation need to be granted either under the Workmen's Compensation Act or Fatal Accidents Act or Common Law, since the accident here, as already found, arose out of the use of the motor vehicle and since the petitioner preferred to claim compensation as per the provisions of Motor Vehicles act, it is positively considered and I hold that the insurance company is bound to grant compensation as per the provisions of the Motor Vehicles Act.

19. It is already found by the Hon'ble High Court of Kerala in the appeal that liability is on the owner and driver. Now on the basis of the discussions above, this Tribunal hold that being the insurer, R3 is liable to indemnify the owner. Hence it is concluded that R1 to R3 are jointly and severally liable to compensate the petitioners."

11. I see no reason to interfere with the above finding. Moreover, in Sulaiman's case (supra), this Court considered a similar point. It will be better to extract paragraphs 16 and 17 of the above case.

"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".”

12. It is evident from Ext.B1 policy produced in this case that an amount of Rs.3480/- is paid as premium in the following manner:

B:T.P.BASIC

3,280.00

Compulsory PA to Owner – Driver

100.00

Amount 200000

WC to employee 1

25.00

Employees Others 1

75.00

Total Liability Premium

3,480.00

Ext.B1 contains the details of the terms and conditions of the policy. An amount of Rs.75/- is paid towards employees others 1 and WC to employee 1 separately. In such circumstances, the contention raised by the counsel for the insurance company can not be accepted.

13. Moreover, in Ramachandra's case (supra), the Apex Court observed like this:

“10. The respondent-insurance company assailed the judgment and order of the tribunal by filing a first appeal bearing MFA No.6711/2004 in the High Court of Karnataka at Bangalore wherein the learned single Judge recorded that the only grievance of the appellant-insurance company was that while allowing the claim petition, the first respondent/claimant had put the entire burden on the appellant to satisfy the amount of `1,42,800/- which was awarded to the claimant. The counsel representing the insurance company submitted before the High Court that it was not in dispute that the claimant was travelling as a cleaner in the matador van in question and, therefore, the liability of the appellant ought to have been restricted under the Workmen's Compensation Act. As such, the order of the tribunal could not be sustained in law to the extent of liability over and above the liability under the Workmen's Compensation Act.

11. The learned single Judge of the High Court almost summarily allowed the appeal as he was of the view that the claimant having been a cleaner in the matador van insured with the appellant herein, the liability could not have been over and above the liability under the Workmen's Compensation Act. The learned single Judge in support of his view relied upon the judgment and order reported in the case of National Insurance Company Ltd. v. Lagamanna & Ors. reported in 2007 ACJ 50. The learned single Judge recorded that the Division Bench in the said decision had held that when no cover premium is paid to cover larger liability, the liability of the insurance company will be restricted to the one under the Workmen's Compensation Act. It was, therefore, held that in the light of such settled position of law, the tribunal could not have put the entire liability on the appellant. The learned single Judge, therefore, directed that the liability of the insurance company was restricted to one under the Workmen's Compensation Act which would be ☐ 32,091/- and the balance will have to be shouldered by the insured/owner of the vehicle. It was further ordered that the rate of interest will be as per order of the Motor Accident Claims Tribunal. The appeal was allowed to this extent but a further direction was given that if excess amount had been deposited, the same will be refunded to the insurance company.

12. Since, the insured/owner of the vehicle had never appeared either before the tribunal or the High Court, the claimant-appellant felt aggrieved and has, therefore, come up in appeal before this court assailing the judgment and order of the High Court wherein the directions recorded herein above is under challenge.

13. Learned counsel for the appellant/claimant in substance contended that the High Court ought not to have passed the impugned order in view of the ratio of the judgment and order passed by this Court in Suresh Chandra v. State of U.P. & Anr. reported in 1996 ACJ 1 wherein this Hon'ble Court has held that when the labourers sustain injuries during the course of his employment due to the negligence of the driver and the claim is made under the Motor Vehicles Act, the compensation could not be limited to the amount admissible under the Workmen's Compensation Act. Therefore, it was submitted that the impugned order is liable to be set aside by this Court. The counsel had further submitted that the tribunal was justified and rightly directed the respondent-insurance company to pay the compensation together with costs and interest at 6 per cent per annum from the date of petition to the date of payment and the first respondent/insurance company being the insurer of the vehicle was rightly directed to pay the entire compensation. The learned single Judge was thus in error in allowing the appeal of the respondent insurance company in part which is fit to be struck down as illegal and invalid.

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16. The learned Judges therefore held that in case the owner of the vehicle

wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147 (1) (b), the same should not be restricted to that under the Workmen's Compensation Act but should be more or unlimited, but he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Compensation Act. The learned Judges were, therefore, pleased to hold that the liability of the insurance company to satisfy the award would be restricted to that arising under the Workmen's Compensation Act and the owner of the vehicle was held liable to satisfy the remaining portion of the award.

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18. Thus in so far as the view of the High Court is concerned to the extent that the compensation would be restricted to be paid only to the extent which is payable under the Workmen's Compensation Act by making a sweeping generalisation, the same is clearly contrary to the view taken by this Court even in the judgment and order on which reliance has been placed by the counsel for the respondent-insurance company as it is sufficiently clear and unambiguously laid down which is recorded hereinbefore that the compensation payable to the employee cannot be restricted merely under the Workmen's Compensation Act and it can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy.”

[underline supplied]

14. Similarly in Sasikumar's case (supra) also, this Court considered the same point. Paragraphs 18 and 19 of the above judgment is extracted hereunder:

“18. With regard to the reliance sought to be placed on the decision rendered by the Apex Court in 2008 (4) KLT 552 (SC) = AIR 2008 SC 2871 (United India Insurance Co. Ltd. v. Suresh K.K.), it was a case where the three wheeler Goods Autorickshaw was not having any additional seat to carry anybody other than the driver. There was also a further case that no goods were actually being carried in the vehicle at the relevant time. A finding was rendered by the Apex Court on both the above grounds. Coming to the instant case, the fact that goods were being carried in the vehicle at the relevant time stands admitted. The dispute is only with regard to the question whether anybody else was permitted to be carried in the vehicle or whether the appellant was travelling along with the driver, sharing his one and only seat available in the vehicle. A copy of the policy was produced before the Tribunal as Ext.B1, wherein the seating capacity was shown as 'zero'. At the same time, it was a 'comprehensive policy' providing for own damage as well, and necessary premium has been collected under 'A' segment of the Schedule. Coming to 'B' segment of the Schedule of premium, liability to public risk (Basic) was covered by collecting premium of ☐ 1183/-. A sum of ☐ 75/- was collected for coverage towards unlimited T.P.P.D. (Third Party Property Damage) and yet another sum of ☐ 15/-was collected towards legal liability for paid Drivers/Workmen No.1. The learned Counsel for the Insurance Company submitted that the said premium of ☐ 15/- was collected only to provide additional coverage to the driver/Workmen No.1, over and above the extent of liability to be satisfied under the M.V. Act in terms of Section 147(2)(b)(ii) with reference to extent as payable under the Workmen's Compensation Act. But this is not discernible from the policy schedule and the terms and conditions were never produced before the Tribunal in this regard. While collecting additional premium of ☐ 75/- towards T.P.P.D., there was a specific endorsement that, it is for the Cover for Unlimited Amount towards T.P.P.D. No such wording is used as to the collection of ☐ 15/- in respect of the Paid Driver/Workmen No.1, if it were intended to provide such wider coverage over and above the limit under the Workmen's Compensation Act.

19. Driver of a Goods carriage comes within the statutory coverage under Section 147 of the M.V. Act; even under an 'Act Only' policy (to the extent payable under the Workmen's Compensation Act) and no additional premium is required to be collected to provide such coverage to driver. Collection of additional premium is stated as in respect of Paid Drivers/Workmen No.1 and it is shown as in respect of 'legal liability'. If the word 'legal liability' are to be construed as statutorily liability, the extent is clearly discernible from Section 147(2); which makes a reference to the ceiling under the Workmen's Compensation Act. If this be the position, no additional premium was necessary to meet the 'legal liability' or statutory liability in respect of the claim of a driver engaged for driving the goods carriage. The RC particulars of the vehicle were not caused to be produced before the Tribunal and is not made available before this Court as well.”

[underline supplied]

In the light of the above dictum, I think there is nothing to interfere with the finding regarding the liability of the insurance company.

15. The next point to be decided is whether the quantum of compensation awarded by the Tribunal is justified. There is no challenge on the quantum of compensation by the insurance company in M.A.C.A.No.1522/2016. The claimant filed M.A.C.A.No.3354/2021 for enhancement. After going through the amount awarded in different heads, I am of the considered opinion that, there is nothing to interfere with the compensation awarded by the Tribunal. The Tribunal awarded sufficient compensation under different heads. Therefore, both these appeals fail.

Hence, M.A.C.A.Nos.3354 of 2021 and 1522 of 2016 are dismissed.

