

(2005) 06 KL CK 0060
In the High Court Of Kerala
Case No : M.F.A. No. 27 of 2004

United India Insurance Company Ltd.

APPELLANT

Vs

Annakutty and Another

RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

Workmens Compensation Act, 1923 — Section 3(1)(b)(ii)

Citation : (2005) 3 ACC 881 : (2005) 107 FLR 595 : (2005) 2 KLJ 541 : (2005) 3 KLT 555 : (2005) 3 LLJ 824

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

Bench : Division Bench

Advocate : Mathews Jacob, for the Appellant; K. Jaju Babu, M.U. Vijayalakshmi and K. Harilal, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Insurer is the appellant. The appellant assails the order of the Worker's Compensation Commissioner in favour of the respondents, dependents of a deceased workmen. He was a driver. He succumbed to injuries on 28-03-2002, when a jeep of his employer driven by him hit on another stationary vehicle. The 1st respondent/claimant claimed compensation in terms of the provisions contained in the Worker's Compensation Act, 1923. The employer remained ex-parte. The insurer/appellant contested the matter. It was contended on behalf of the appellant that the workman did not have a licence to drive a motor vehicle. Therefore his action was unauthorised. So this dependent was not entitled to claim compensation. The dependent, the mother of the deceased contended that he did have a driving licence. Any how, based on the evidence on record the tribunal came to the conclusion that he was authorised to drive the vehicle by his employer. It was contended by the Ist respondent/claimant that the workman did have a monthly salary of Rs. 4,500/-. No other documents were produced. The tribunal therefore took the maximum allowable in terms of the provisions in the Act to compute the compensation. It is contended

that in the absence of any evidence the commissioner ought not have found that the workmen did have a licence to drive the motor vehicle and that he did have a monthly income of Rs. 4,500/-. But the mother of the deceased had clearly deposed that he did have a driving licence. On the death of workman the mother was unable to trace out the licence. There was also no evidence disputing the rate of monthly wage as reckoned by the commissioner.

2. It is an admitted case that deceased workman was an employee of the insured and that the accident occurred while he was driving the jeep and the accident resulted in his death. It was on 28-3-2002. When the accident has resulted in the death of the workman, necessarily clause (b)(ii) of the proviso to section 3(1) of the Act will have no application. Willful disobedience of an order or rule expressly framed for the purpose of securing such safety like the insistence of a driving licence will have bearing going by the said provision, only in respect of any injury not resulting in the death of the workman. Necessarily even if there was any contravention of the provisions of law, the compensation shall have to be paid by the employer wherever death occurs as a result of the accident. When there was a valid insurance policy, that liability shall be on the insurer. Therefore absence of driving licence cannot be taken as a reason to deny the compensation, in case like this where the accident resulted, admittedly in the death of the workman. The contention as to the wages of the workman is a finding based on the evidence available on record in the form of the oral testimony of AW1, the mother of the deceased. When a tribunal had come to such a factual finding that also cannot be taken as a reason for unsettling the finding, in an appeal.

Appeal fails and is dismissed.