
(1986) 07 KL CK 0037
In the High Court Of Kerala

United India Insurance Coy	Vs	APPELLANT
Gangadharan Nair		RESPONDENT

Date of Decision : 01-07-1986

Acts Referred:

Employees Compensation Act, 1923 — Section 14
Motor Vehicles Act, 1988 — Section 101

Citation : (1987) 2 ACC 199 : (1988) ACJ 296 : (1987) 1 ILR (Ker) 219 : (1987) 1 LLJ 448

Hon'ble Judges : V. Sivaraman Nair, J;K. John Mathew, J

Bench : Division Bench

Judgement

V. Sivaraman Nair, J.—This appeal arises from the order of the Deputy Labour Commissioner, Kozhikode, in Workmens Compensation Case No. 11 of 1978. The applicant before the Commissioner was an employee under the first respondent. While he was employed as driver in stage carriage bearing registration No. KLD 9329 on 24th November 1976, the vehicle met with an accident resulting in a fracture of both bones of his right leg. He claimed compensation of a sum of Rs. 32,340/- on the basis of his monthly wages, which were Rs. 775/-. The present appellant, the insurer and also the employer were respondents before the Commissioner. The only points raised by them before the Commissioner were that, (1) "Whether the accident occurred due to the negligence of the applicant" and (2) "what shall be the quantum of compensation payable to him, if the first point is answered in his favour." No point of jurisdiction was raised by either of them before the Commissioner. The Commissioner held that there was no negligence on the part of the applicant. The quantum of compensation was fixed as Rs. 29,400/- as the amount of wages due to the applicant was found to be Rs. 450/- and the permanent disability and loss of earning capacity was estimated at 25%. The Commissioner found the insurer liable to pay the compensation since the employer-insured was entitled to be indemnified. It is against that order the present appeal is filed.

2. Shri S. Parameswaran, counsel for the appellant, urged that the Deputy

Commissioner had no jurisdiction to pass an award against the insurance company in view of Section 14 of the Workmen's Compensation Act. He also submitted, that the finding of the Commissioner, that the accident was not due to the negligence of the applicant, the assessment of the amount of monthly wages and the quantification of compensation, were all unsustainable.

3. The respondents naturally support the order and submit that the appellant may not be permitted to raise the point of jurisdiction depending upon investigation into and determination of facts, since no such point was taken before the Commissioner.

4. The only objection which seems to have been urged by the employer before the Commissioner was that the vehicle was insured and therefore the insurer was liable to compensate the applicant. The insurer stated that it was not liable to make any payment in respect of mechanical breakdown, and that in any case, the accident did not occur in the course of the applicant's employment and therefore there was no liability for the insurer to pay any compensation. No point of jurisdiction seems to have been urged before the Commissioner. The insurer had participated in the proceedings before the Commissioner without raising, any objection to jurisdiction.

5. Counsel for the appellant referred us to the decision of a Division Bench of this Court reported in *United India Fire and General Insurance Co. Ltd. Vs. Joseph Mariam and Another*, where it was held that the only circumstance under which the liability of the employer to compensate an employee could be enforced against the insurer were those specified in Section 14(a) of the Workmen's Compensation Act, and. where such conditions are not satisfied, the Commissioner for Workmen's Compensation could not issue any direction to the insurer. The same contention was raised before another Division Bench later and in the decision reported in *United India Fire and General Insurance Co. Ltd. Vs. P.M. Ishammal and Others*, . The court rejected to consider the objection to jurisdiction for the reason that?

It is settled rule of law that where there is no lack of inherent jurisdiction in a court 2 or tribunal and jurisdiction is on the existence of certain facts, lack of jurisdiction on account of non-existence of jurisdictional facts ought in the first instance be raised before the Tribunal 3 or the court as the case may be.

There we should presume that the Commissioner for Workmen's Compensation, Trivandrum, was competent to pass an award as contemplated by Section 14 of the Act making the 3rd opposite party also liable for the compensation amount as was done by the judgment under appeal.

It is true that the decision of the earlier Division 4 Bench was not brought to the notice of the later Division Bench. We should, however, notice the fact that even in the earlier Division Bench decision, it was stated that no relief need be granted to the insurer since the amount A of compensation had been deposited by it in court.

6. In the decision in *New India Assurance Co. Ltd v. Parameswari Amma* ILR 1976 (1) Ker 237 also it was held that the sole circumstance under which the liability of the employer can be extended to the insurer is that provided in Section 14. It is not clear from that decision as to whether the point of jurisdiction was urged before Commissioner.

7. In the decision in *National Insurance Co. Ltd. Vs. Jabunbi and Others*, a single Judge of the High Court of Madhya Pradesh had held that in the absence of any plea or any finding by the Commissioner, that the employer had become insolvent, the Commissioner should not have fastened any liability on the insurer for compensation due to the employee. In that decision, the court did not have any occasion to consider whether the relief could be granted in the absence of an objection to jurisdiction which ought to have been taken at the earliest stage, and such objection being one which had to depend upon facts to be pleaded and proved.

8. Section 14 of the Workmen's Compensation Act, on the terms of which the point of jurisdiction was urged by the appellant, is in the following terms:

14. Insolvency of employer - (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have under the employer.

This provision was understood as excluding the insurer from liability to employees under the Workmen's Compensation Act, except in a case where the employer became insolvent or made or composed the scheme of arrangement with its creditors, or winding up proceedings were commenced in cases where the employer was a company. The purport of the provision appears to us to be only that in such circumstance the right of the workmen shall not be defeated and the insurer can then be substituted in the place of the insolvent employer. It does not appear to us to operate as a prohibition against any proceedings before the Workmen's Compensation Act involving the insurer who is liable under a contract of insurance to discharge the liability of the employer to compensate the workmen according to the provisions of the Workmen's Compensation Act. We are not persuaded to accept the submission that a provision which enables the insurer to be substituted in the place of an employer shall be read as prohibition against the insurer being proceeded against before the Workmen's Compensation Commissioner. Similar provisions are it available in Section 101 of

the Motor Vehicles Act, which also provided that in case the insured becomes insolvent or the employer company is wound up, etc. the employee shall be entitled to proceed against the insurer. If the similar provision u/s 101 of the Motor Vehicles Act does not enable the insurer to disclaim liability, we do not understand how an identical provision in the Workmen's Compensation Act should be read as providing immunity in favour of the insurer in spite of the terms of the contract of insurance.

9. Had it been necessary for us to dispose of this appeal on merits, we would have referred the matter for consideration by a larger Bench in view of the decision reported in ILR 1976(1) Ker 237 and United India Fire and General Insurance Co. Ltd. Vs. Joseph Mariam and Another, . Since we are not inclined to consider this objection to jurisdiction which should have been specifically pleaded and could be decided only on a detailed investigation of facts, and which was not raised before the Commissioner for Workmen's Compensation, we do not think that we need adopt that course in this case.

10. We find that the Commissioner was right in his finding that the wages of the applicant-employee was Rs. 450/- per month. It is true that better evidence could have been adduced to substantiate that claim. The important fact is that the assertion made by the applicant when he was examined as a witness before the Commissioner was not sought to be assailed either by the employer or by the insurer by producing any other evidence. The wages payable to drivers and other workmen engaged in transport vehicles are covered by statutory notifications issued under the Minimum Wages Act and the Kerala Transport Workers (Payment of Fair Wages) Act etc. It is notorious that these rates are definitely more than the wages claimed by the claimant. If his monthly wages were Rs. 450/- and he had suffered partial disability to the extent of 25% the Commissioner had only to apply the terms of Schedule IV of the Workmen's Compensation Act as amended by Act 65 of 1976. That is exactly what the Commissioner had done. We should also take note of the fact that half of the amount of compensation, which was deposited, has been drawn by the applicant-employee pursuant to orders of CMP No. 11127 of 1981. Even though it was observed in the order dated 2nd July 1981 that in case the appellant was found liable to pay the entire amount, it would be answerable for the interest notwithstanding the deposit we do not think that it is necessary for us to issue any further directions in the matter excepting to state that the claimant will be entitled to be paid the balance amount of compensation as awarded.

The appeal is, therefore, dismissed. There will be no order as to costs.