

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MFA.No. 185 of 2006 ()

AGAINST THE ORDER IN WCC 356/2002 of W.C.C.,THRISSUR

APPELLANT(S)/4TH OPPOSITE PARTY:

THE ORIENTAL INSURANCE CO.LTD.,
CHALAKUDY, REPRESENTED BY ITS ADMINISTRATIVE, OFFICER
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/APPLICANTS:

1. MATHATI, S/O.ANTHONY,
VADAKKUMTHALA HOUSE, RESIDING AT PUSHPAGIRI, DESOM
MELOOR VILLAGE, KUVVAKATTEKUNNU P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

2. ALPHONSA, W/O.MATHAI,
VADAKKUMTHALA HOUSE, RESIDING AT PUSHPAGIRI, DESOM
MELOOR VILLAGE, KUVVAKATTEKUNNU P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

3. BAIJU, S/O.MATHAI,
VADAKKUMTHALA HOUSE, RESIDING AT, PUSHPAGIRI DESOM
MELOOR VILLAGE, KUVVAKATTEKUNNU P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

4. RIJI, D/O.MATHAI, VADAKKUMTHALA HOUSE,
RESIDING AT PUSHPAGIRI DESOM, MELOOR VILLAGE
KUVVAKATTEKUNNU P.O., MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

5. SHIJU ANTONY, PROPRIETOR,
M/S.YOUNG MOTORS, CHALAKUDY (TRADER)
TRADE CERTIFICATE NO.2/2000, RENEWED UPTO, 23.2.2003.

6. CENTURY ASSOCIATES, BYE PASS ROAD,
MANNUTHY, THRISSUR-680 655.

7. JOSHY.N.P., NADUVELIKUDY HOUSE,
MAMBRA P.O., KORATTY WEST.

R1TO 4 BY ADV. SRI.P.V.BABY
R1TO 4 BY ADV. SRI.A.N.SANTHOSH
R5 BY ADV. SRI.THOMAS ABRAHAM
R5 BY ADV. SRI.K.B.ARUNKUMAR
R5 BY ADV. SRI.DIPU.R
R5 BY ADV. SMT.MERCIAMMA MATHEW
R6 BY ADV. SRI.U.O.JOSE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.F.A.(WCC) No.185 OF 2006

Dated this the 21st day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the Insurance Company aggrieved by the order in W.C.C.No.356/2002 on the file of the Commissioner for Workmens Compensation, Thrissur.

2. Heard the learned Senior Counsel for the appellant.

3. The substantial question raised in this case is whether in the facts and circumstances of this case the Commissioner went wrong in holding that there is employee-employer relationship between the deceased and 3rd opposite party, against the pleadings and evidence in this case ?

4. The finding by the Commissioner is that the third opposite party before the Commissioner is a person who has engaged the deceased Rixon to drive the vehicle and the deceased was a workman under the third opposite party as defined under Section 2(1) of the Act

and that there was employer-employee relationship between the deceased and 3rd opposite party and that the accident arose out of and in the course of the employment of the 3rd opposite party as the principal employer.

5. The legal issue raised by the appellant is covered against the appellant in the light of the judgment of the Full Bench of this Court in **United India Insurance Company Ltd. v. Surendran (2015 (1) KLT 45(F.B.)**. It was held by the Full Bench that to claim coverage of Clause (a) to the proviso to Section 147 of the Act, the employee need only be engaged in driving the vehicle, irrespective of whether he was employed as driver or not.

In the light of the above and in the light of the fact that the findings of the Commissioner is perfectly in tune with the legal position discussed by the Full Bench, no interference is called for. Accordingly, the appeal is dismissed.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

K.P.JYOTHINDRANATH, JUDGE