

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

MFA.(WCC) No. 109 of 2012 ()

**AGAINST THE JUDGMENT IN WCC 206/2002 OF THE COURT OF COMMISSIONER FOR
WORKMEN'S COMPENSATION & DEPUTY LABOUR COMMISSIONER, KANNUR DATED
16.01.2009**

APPELLANT/APPLICANT:

**SUNIL ULLIPARAMBIL MATHEW,
KAPPISET, CHETTAPALAM, P.O.CHETTAPALAM
PADICHIRA, SULTHAN BATHERY TALUK, WAYANAD.**

BY ADV. SMT.CELINE JOSEPH

RESPONDENT(S)/OPPOSITE PARTIES:

**1. P.M. SALAM,
POYILIL HOUSE, POST CHUYAMBAM, PULPALLY
BATHERY, WAYANAD.**

**2. THE ORIENTAL INSURANCE COMPANY LTD.,
BRANCH AT WAYANAD.**

**R2 BY ADV. SRI.M.JACOB MURICKAN
R1 BY ADV. SMT.M.R.JAYALATHA
R2 BY SRI.GEORGE CHERIAN (THIRUVALLA), SC, ORIENTAL INSURANCE CO.**

**THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 12-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

M.F.A.(WCC) NO.109/2012

APPENDIX

PETITIONER'S ANNEXURE:

ANNEXURE I: COPY OF THE REVIEW PETITION FILED BY THE APPELLANT

**ANNEXURE II: COPY OF THE LETTER DATED 25.04.2011 OF THE DEPUTY LABOUR
COMMISSIONER, KANNUR**

RESPONDENTS' ANNEXURE: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

P.B.SURESH KUMAR, J.

M.F.A. (WCC) Nos.109 of 2012 & 19 of 2013

Dated this the 12th day of January, 2015

JUDGMENT

The applicants in two applications for compensation filed under Section 22 of the Workmen's Compensation Act are the appellants in these appeals. Among them, the appellant in M.F.A.(WCC) No.109 of 2012 was the driver and the appellant in M.F.A.(WCC) No.19 of 2013 was the cleaner engaged in Truck bearing registration No.KL-12/8222 owned by the first respondent in the appeals. The said truck involved in an accident on 1.7.1999 and the appellants have sustained injuries. According to the appellants, at the relevant time of the accident, the said vehicle was covered by a valid insurance policy issued by the second respondent in the appeals. The appellant in M.F.A.(WCC) No.109 of 2012 claimed a sum of Rs.2,50,000/- and the appellant in M.F.A.(WCC) No.19 of 2013 claimed a sum of Rs.2,75,000/- by way of compensation from the respondents.

2. The first respondent did not contest the applications. The second respondent filed counter statements in the applications, denying existence of any insurance policy issued

by them for the vehicle involved in the accident.

3. The Commissioner for Workmen's Compensation, on an appraisal of the materials on record, found that the appellant in M.F.A.(WCC) No.109 of 2012 is entitled to a sum of Rs.76,244/- and the appellant in M.F.A.(WCC) No.19 of 2013 is entitled to a sum of Rs.65,073/- by way of compensation. The Commissioner, however, exonerated the insurer from the liability to indemnify the owner on the ground that the owner has not taken any steps to prove the existence of a valid insurance policy for the vehicle at the time of accident. It is aggrieved by the said decision of the Commissioner, exonerating the insurer from the liability to pay compensation, the appellants have come up in this appeal.

4. Heard the learned counsel on both sides.

5. According to the appellants, since the owner of the vehicle did not cause production of the insurance policy before the Commissioner after the disposal of the applications, the appellants have obtained copies of the insurance policy and filed applications for review of the decisions of the Commissioner and the same were dismissed on the ground that the Commissioner has no authority to review his decisions.

6. In so far as it is asserted by the appellants that the vehicle at the relevant time of the accident was covered by a valid insurance policy issued by the second respondent, I am of the view that the appellants shall be given an opportunity to establish the existence of the policy, as the conduct of the owner of the vehicle in not producing the policy, if any, issued by the second respondent before the Commissioner, shall not prejudice the appellants.

In the circumstances, the impugned decisions are set aside to the extent it exonerates the insurer of the vehicle from the liability to compensate the appellants and the matters are remitted to the Commissioner for Workmen's Compensation, for considering the question as to the existence of the insurance coverage. The parties are directed to appear before the Commissioner on 16.02.2015.

JV

sd/-
P.B. SURESH KUMAR,
JUDGE