

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

MFA(WCC).NO. 48 OF 2013

**JUDGMENT IN WCC 30/2008 OF THE COURT OF THE COMMISSIONER FOR
WORKMEN'S COMPENSATION AND DEPUTY LABOUR COMMISSIONER, KOLLAM.**

APPELLANT/OPPOSITE PARTY:

**THE SUPERINTENDENT
TRAVANCORE RUBBER & TEA CO. LTD., AMBANAD ESTATE
KALTHURUTHY, KOLLAM.**

**BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS**

RESPONDENT/APPLICANT:

**KANNIMARIYA
W/O.MUTHAYYA, MIDDLE AMBANAD DIVISION, AMBANAD ESTATE
KALTHURUTHY-691 309, KOLLAM.**

**R1 BY ADVS. SRI.MANOJ RAMASWAMY
SMT.JOLIMA GEORGE**

**R2 BY ADVS. SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

MFA(WCC).NO. 48 OF 2013

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE 1: ORIGINAL RECEIPT DATED 8.2.2013 ISSUED BY THE
EMPLOYEE'S COMPENSATION COMMISSIONER, KOLLAM.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A. TO JUDGE

AS

A.HARIPRASAD, J.

M.F. A.(WCC).No.48 of 2013

Dated this the 25th day of May, 2015

J U D G M E N T

Opposite party in a claim petition before the Commissioner for workmen's compensation under the Employee's Compensation Act, 1923 (in short 'the Act') is the appellant herein. The opposite party, a limited company challenges the judgment of the commissioner on the ground that the commissioner illegally mulcted liability on the appellant to pay without considering the coverage of the employee by a policy issued by the Oriental Insurance Company Limited.

2. Heard the learned counsel for the appellant/opposite party and the learned counsel for the second additional respondent (Insurance Company).

3. Learned counsel for the insurance company contended that the applicant (first respondent) has not impleaded the insurance company in the proceedings before the Commissioner.

4. Learned counsel for the appellant submitted

that by an omission amounting to a mistake, no pleading was raised. While countering the application before the Commissioner to the effect that the employees under the appellant were covered by a group insurance policy. Learned counsel for the insurance company contended that, in the absence of impleading the company, it could not effectively contest the case. Learned counsel for the appellant produced a copy of the insurance policy for perusal which *prima facie* shows that the applicant is also covered under the policy. However, I am not able to take a final decision in this matter to shift the legal liability on the insurance company without bringing them on to the party array and without affording them an opportunity of being heard. Reckoning the contention raised by the parties, I am of the view that the matter has to be remitted back to commissioner for fresh adjudication. It is made clear that the commissioner shall implead the Oriental Insurance Company Limited as an additional respondent in the proceedings and allow them to raise appropriate contentions before him for taking a final

decision.

In the result, the impugned award is set aside. This matter is remitted back to the Commissioner for fresh disposal after affording an opportunity to all parties to adduce evidence.

The parties shall appear before the Commissioner on 1st July, 2015.

Sd/-

A.HARIPRASAD, JUDGE.

AS