IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 2281 of 2010 ( )

AGAINST THE AWARD IN OPMV 829/2003 of M.A.C.T.,PERUMBAVOOR DATED 07-07-2010

APPELLANT(S)/3RD RESPONDENT:

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

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/CLAIMANTS AND RESPONDENTS 1 & 2:

1. VELAYUDHAN AND OTHERS
PADUVAPURAM.P.O, PIN 683582.
(HUSBAND OF THE DECEASED).

2. P.V.JAYA PRAKASH, PERATTU HOUSE,
EDAKUNNU, PADUVAPURAM P.O., PIN 683582.
(SON OF THE DECEASED).

3. JAYAPRABHA, PERATTU HOUSE,
EDAKUNNU, PADUVAPURAM P.O., PIN 683582.
(DAUGHTER OF THE DECEASED).

4. V.V.JINSON, S/O.VARGHESE,
VADAKUMCHERY HOUSE, KAROOR P.O., PIN 680683.

5. PRABHAKARAN, KALLINGAPURAM HOUSE,
ASTHAMICHERA, CHALAKUDY P.O., PIN 680307.

R,R1-3 BY ADV. SRI.P.V.BABY
R,R1-3 BY ADV. SRI.A.N.SANTHOSH
R,R4 & R5 BY ADV. SRI.V.A.AJAI KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2015, ALONG WITH MACA. 2287/2010, MACA. 2357/2010, MACA. 2358/2010, MACA. 2359/2010, MACA. 2378/2010, MACA. 2379/2010, THE COURT ON 2/9/2015 DELIVERED THE FOLLOWING:

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

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M.A.C.A.Nos.2281, 2287, 2357, 2358, 2359, 2378 and 2379 of 2010

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Dated this the 2nd day of September, 2015

JUDGMENT

Ramachandran Nair, J.

MACA Nos.2281 and 2287 of 2010 are filed by the insurance company and the other appeals are filed by the owner and driver of the vehicle, aggrieved by the award passed by the Motor Accidents Claims Tribunal, Perumbavoor. The Tribunal passed a common award in respect of O.P.(MV) Nos.815, 828, 829, 830 and 834 of 2003. The present award is passed, after this Court set aside the earlier award for properly considering the plea regarding liability of the insurance company.

2. The short facts for the disposal of the appeals are the following: The vehicle involved is a mini lorry bearing Reg. No.KL-7/K-8334 and the accident occurred on 4.4.2003 at about 11 a.m. It was going through the Aluva - Angamaly National Highway. It hit the back side of a KSRTC bus causing it to turn down thereby causing

injuries to the claimants who were loading and unloading workers being taken in the vehicle and two among them, viz. Thankamma and Anu succumbed to the injuries, after they reached L.F. Hospital, Angamaly. In respect of them the legal representatives have filed the applications seeking compensation.

3. Written statements were filed by the owner, driver as well as the insurance company. They contended that the driver was duly licensed and the claimants and the deceased were travelling as loading and unloading workers of the first respondent, owner of the vehicle. The vehicle was duly insured. The insurance company admitted the policy. It was mainly contended that the claimants and the deceased were travelling as gratuitous passengers and they are not covered by the policy. It was also pointed out that the policy is governed by Endorsement Nos. IMT 37 and IMT 39 and as per Endorsement No.IMT 39, the insurance company received Rs.50/- and as per IMT 37 it had received Rs.75/-. Being gratuitous passengers, the claimants will not come under the explanation given in IMT 39.

4. The policy was marked on the side of the insurance company

as Ext.B1. A common award was passed on 14.11.2007 directing the owner and driver to pay the compensation and the insurance company was exonerated on the finding that the claimants and deceased were gratuitous passengers.

5. Appeals were filed as MACA Nos.761, 830, 834, 835, 1134, 1250, 1264, 1311, 1318 and 1653 of 2008. This Court confirmed the findings on rash and negligence on the part of the driver of the lorry as well as the amount of compensation. That part of the finding exonerating the insurance company was set aside and the matter was remanded.

6. In paragraph 19 of the judgment, this Court directed to consider the following issue:

> "According to us, more than the premium amount paid what has to be looked into is the clause as a whole contained in the policy of insurance as to ascertain whether there arises the liability to indemnify the owner in the case of any injury or death occurs or occurred to any one of the loading and unloading worker under the policy of insurance so issued. The amount of premium is something which is subject to variation from time to time."

Paragraph 20 will show that the contention of the claimants and the owner was that since they were employed by the owner of the vehicle and since the accident occurred while they were working in the course of employment and as such even statutorily the insurer is liable to indemnify the owner under Section 147 of the Motor Vehicles Act. This Court also observed that it is open for the insurer to place before the Tribunal the proposal made at the time of issuance of policy.

7. After the matter went back, the owner was examined as R.W.1 and the insurance company examined its Branch Manager as R.W.2 and they produced in evidence additional documents Exts.B2 and B3, which are respectively permit of the lorry and certified true photo copy of IMT.

8. After considering the evidence in this case and after referring to Endorsement No. IMT 39 and Section 147 of the Motor Vehicles Act, the Tribunal held the view that the claimants and deceased were workmen employed by the insured in the vehicle and in connection with their employment, for loading and unloading work, they were taken in the vehicle. The vehicle is a goods carriage vehicle and in

the light of Ext.B2 permit, three workers are permitted. Therefore, it was held that the liability of the insurance company is limited to two loading and unloading workers for the reason that three persons covered by the permit include the driver of the vehicle. The liability of the insurance company was thus upheld in respect of the two higher awards, viz. the award amount in respect of O.P.(MV)Nos.829/2003, amounting to Rs.2,94,470/- and 834/2003, amounting to Rs.2,51,510/-. In respect of the other three cases, it was held that the owner and driver are jointly and severally liable. Therein, amounts have been awarded at the rate of Rs.10,730/-, Rs.29,350/- and Rs.20,530/-.

9. Heard Shri George Cherian, learned Senior Counsel and Smt. K.S.Santhi, appearing for the insurance company, Shri P.V. Baby and Shri A.N. Santhosh, learned counsel for the claimants and Shri O.P. Nandakumar and Shri V.A. Ajaikumar, learned counsel for the owner and driver of the vehicle.

10. Learned Senior Counsel for the appellant insurance company submitted that the claimants and deceased were actually

gratuitous passengers and therefore there is no statutory liability for the company to indemnify the owner - insured. It is submitted that the policy is subject to Endorsement Nos. IMT 37 and 39. Both will not apply to the facts of this case, as IMT 37 applies to non fair paying passengers who are not employees of the insured and Endorsement No. IMT 39, even if it shows that an additional amount of Rs.50/- was collected, it is only in respect of the additional liability for employees covered under the Workmen's Compensation Act like a driver, which cannot be claimed by the claimants and the deceased. Learned Senior Counsel mainly relied upon a judgment of the Apex Court in **Sanjeev Kumar Samrat v. National Insurance Co. Ltd**. (2013 (1) KLT 41 - SC) in this context. According to the learned Senior Counsel, being a goods vehicle, persons travelling in the platform cannot get the coverage.

11. It is submitted that the witness R.W.2 has explained all these facts in his oral evidence. Even though the remand order directed the company to produce the proposal form, as it was not available, it could not be produced.

12. Sri A.N. Santhosh and Shri V.A. Ajaikumar learned counsel appearing for the claimants and the owner respectively opposed the contentions of the learned Senior Counsel for the insurance company. It is submitted that the vehicle was a mini lorry which was being plied on the day for carrying mud. The evidence of the owner will show that the claimants and deceased were his workers who were doing loading and unloading work. There were seven persons in the vehicle during the time when the accident occurred. He was executing the work of transporting earth and mud. It is submitted that R.W.1's evidence will show that they were his loading and unloading workers. Under the purview of the Workmen's Compensation Act and in tune with the conditions of policy all the workers will get insurance coverage. In the light of Section 147(1)(i)(c) of the Kerala Motor Vehicles Act, even payment of additional premium is not required. It is submitted by the learned counsel that some time after loading and unloading of red earth, viz. clay at Chalakkal, it started raining and therefore when the location became muddy, they moved to Karukutty,

another site for continuing the loading work in a similar manner. The insured was also following the vehicle in his motor bike. Therefore, learned counsel pointed out that this is a case where they were carried in the vehicle and being workers of the insured, they will get the statutory coverage. Being workers of the insured, they are not gratuitous passengers. Learned counsel for the respondents also relied upon the following judgments: **National Insurance Company Ltd. v. Mohammed Ali** (2012 (4) KLT 633), **New India Assurance Co. Ltd. v. Mathai** (2003 (2) KLT 542) and a judgment of the Apex Court in **Hanumangouda v. United India Insurance Co. Ltd. and others** {(2014) 9 SCC 341}.

13. The evidence of R.W.1 is thus relevant on the important aspect; that the claimants and the deceased were his loading and unloading workers. Therefore, it is a case where they were taken in the vehicle under a contract of employment. The question will be whether they are statutorily covered under the provisions of the Motor Vehicles Act and are liable to be indemnified in the light of IMT 39 also. In this context, the Tribunal relied upon Ext.B2 permit

issued in favour of the owner, whereby three employees have been permitted. The evidence of the Branch Manager of the appellant, R.W.2 also will show that as per Ext.B1 policy, the insured was permitted to carry three persons including the driver. According to him, 8 persons were there in the open platform. The Tribunal was of the view that the liability of the insurance company can be decided in the light of IMT 39 and the guidelines of the Tariff Advisory Committee contained in Ext.B3. As per Ext.B3 additional premium at the rate of Rs.25/- per employee has to be paid to cover the risk of driver, cleaner or conductor or persons employed in the loading and unloading. The premium payable for such employees is on the basis of total number of employees registered to be carried in the vehicle. As per Ext.B2 permit, the maximum number of employees registered to be carried is 3 in all. The Tribunal then extracted IMT 39 endorsement attached to Ext.B1 and we reproduce hereunder:

> "In consideration on the payment of an additional premium of Rs.50/- it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability

> under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of his Endorsement, the Fatal Accidents Act, 1855 or at common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the KL-7/K-8334 and not exceeding seven in number and will in additional be responsible for all costs and expenses incurred with its written consent."

It was found that, going by IMT 39, the legal liability to the risk of persons employed in the goods carriage vehicle is limited to 7 numbers in all. The additional premium paid is Rs.50/- and hence it was held that the liability of the insurance company is limited to two workmen employed by the first respondent in the vehicle other than the driver. It was held that Section 147(1)(i)(c) of the Motor Vehicles Act will apply.

14. Even though it was vehemently contended by the learned Senior Counsel for the appellant that the claimants and the deceased were gratuitous passengers, we cannot agree. The Tribunal has rightly

found that they were loading and unloading workers of the insured, by relying upon the evidence of P.W.1, R.W.1 and Ext.A15 chargesheet filed by the Police, which also described them as loading and unloading workers. The question will be whether they will get the coverage under Section 147 of the Motor Vehicles Act.

15. The relevant part of Section 147 which is applicable as far as this case is concerned, is the proviso and especially clause 1(i)(c). We extract the same:

> "**147. Requirements of policies and limits of liability:**
> xxxxxx
>
> Provided that a policy shall not be required--
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-
>
> (a) and (b) ....
>
> (c) if it is a good carriage, being carried in the vehicle."

Going by clause ©, if the vehicle is a goods carriage, the employees/workmen being carried in the vehicle are covered statutorily. Thus, Act only policy will cover the risk of loading and unloading workers of the insured.

16. Shri George Cherian, learned Senior Counsel heavily relied upon the dictum laid down in **Sanjeev Kumar Samrat's case** (2013 (1) KLT 41 - SC). That was a case where it was held that the employees engaged by the hirer of the vehicle who travel with the owner of the goods, are not covered by Section 147(1)(b)(i) of the Act. Therefore, the question considered therein is different. Paragraph 2 of the said decision, which we extract hereinbelow, poses the question answered in the said case:

> “2. The centripodal issue that emanates for consideration in these appeals is whether the insurer is obliged under law to indemnify the owner of a goods vehicle when the employees engaged by the hirer of the vehicle travel with the owner of the goods on the foundation that they should be treated as “employees” covered under the policy issued in accordance with the provision contained under S.147 of the Motor Vehicles Act, 1988 (for brevity “the Act”).

It was evidently a case where the employees engaged by the hirer of the vehicle were travelling with the owner of the goods and they wanted to be treated as “employees covered under the policy”. Paragraph 5 will show that the Tribunal considered them as covered in the light of the fact that the policy covered six employees. The appeals filed by the insurance company before the High Court were allowed except in regard to the owner of the goods who was travelling along with the goods in whose case it was held that the insurer is liable to pay compensation to his legal representatives.

17. It was contended by the appellants before the Apex Court that the words “any person” used in Section 147 will cover the workers of the hirer. Per contra, the opposite side argued that the term “employee” means “employees of the insured”. The Apex Court considered a three Judge Bench decision in **New India Assurance Co. Ltd. v. Asha Rani and others** {(2003) 2 SCC 223}. Other later decisions were also considered. In paragraph 19, the scheme under Section 147 with emphasis to the term “employee” was examined and we extract the whole paragraph hereunder:

“19. Keeping in view the aforesaid enunciation of law, it is to be seen how the term “employee” used in S.147 is required to be understood. Prior to that, it is necessary to state that as per S.147(1)(b)(i), the policy is required to cover a person including the owner of the goods or his authorised representative carried in the vehicle. As has been interpreted by this Court, an owner of the goods or his authorised agent is covered under the policy. That is the statutory requirement. It does not cover any passenger. We are absolutely conscious that the authorities to which we have referred to hereinbefore lay down the principle regarding non-coverage of passengers. The other principle that has been stated is that the insurer's liability as regards employee is restricted to the compensation payable under the 1923 Act. In this context, the question that has been posed in the beginning to the effect whether the employees of the owner of goods would come within the ambit and sweep of the term “employee” as used in S.147(1), is to be answered. In this context, the proviso to S.147(1)(b) gains significance. **The categories of employees which have been enumerated in the sub-clauses (a), (b) and (c) of the proviso (i) to S.147 (1) are the driver of a vehicle, or the conductor of the vehicle if it is a public service vehicle or in examining tickets on the vehicle, if it is a goods carriage, being carried in the vehicle.** It is submitted by the learned counsel

> for the appellant that sub-clause (c) is of wide import as it covers employees in a goods carriage being carried in a vehicle. The learned counsel for the insurer would submit that it should be read in the context of the entire proviso, regard being had to the schematic concept of the 1923 Act and the restricted liability of the insurer. It is further urged that contextually read, the meaning becomes absolutely plain and clear that employee which is statutorily mandated to be taken by the insured only covers the employees employed or engaged by the employer as per the policy." (emphasis supplied by us)

It was held that an owner of the goods or his authorised agent will be statutorily covered. It does not cover any passenger. All the authorities considered, viz. **Asha Rani's case** {(2003) 2 SCC 223}, **National Insurance Co. Ltd.v. Bommithi Subhayamma and others** {(2005) 12 SCC 243}, **New India Assurance Co. Ltd. v. Vedwati and others** {(2007) 9 SCC 486}, **National Insurance Co. Ltd. v. Cholleti Bharatamma and others** {(2008) 1 SCC 423) and **National Insurance Co. Ltd. v. Prembati Patel and others** {(2005) 6 SCC 17} lay down the principle regarding non coverage of passengers. It was held that while considering the term “employee”, the proviso to Section 147(1)(b) of the Act gained significance. The categories of employees which have been enumerated in the sub-clauses (a), (b) and © of the proviso (i) to Section 147(1) are the driver of a vehicle, or the conductor of the vehicle if it is a public service vehicle or in examining tickets on the vehicle, if it is a goods carriage, being carried in the vehicle. After adverting to these aspects, in paragraph 20 their Lordships held further as follows:

> “20. It is the settled principle of law that the liability of an insurer for payment of compensation either could be statutory or contractual. On a reading of the proviso to sub-sub-s.(1) of S.147 of the Act, it is demonstrable that the insurer is required to cover the risk of certain categories of employees of the insured stated therein. The insurance company is not under statutory obligation to cover all kinds of employees of the insurer as the statute does not show command. That apart, the liability of the insurer in respect of the said covered category of employees is limited to the extent of the liability that arises under the 1923 Act. There is also a stipulation in S.147 that the owner of the vehicle is free to secure a policy of insurance providing wider coverage. In that event,

> needless to say, the liability would travel beyond the requirement of S.147 of the Act, regard being had to its contractual nature. But, a pregnant one, the amount of premium would be different."

Significantly, it was held that under the proviso, the insurer is required to cover the risk of certain categories of employees of the insured stated therein. The liability of the insurer is limited to the extent of the liability that arises under the 1923 Act (Workmen's Compensation Act) and Section 147 also provides that the owner of the vehicle is free to secure a policy of insurance providing wider coverage.

18. Thereafter, the judgment of the Apex Court in V**ed Prakash Garg v. Premi Devi and others** {(1997) 8 SCC 1) was also considered and in paragraph 24 it was significantly held that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. It was also held that on an apposite reading of Sections 147 and 167 the intendment

of the Legislature is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. We extract the said paragraph in full:

> "24. It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. **Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage.** It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent

in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured." (emphasis supplied by us)

Obviously, while considering the question posed in that case, it was held that the proviso does not cover all kinds of employees and the statutory policy will cover the employees of the insured, either employed or engaged by him in a goods carriage. Finally, it was held that someone who travels not being an authorised agent in place of the owner of the goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy.

19. A close reading of the above judgment will show that it will not help to advance the argument of the appellant, the insurer. It will definitely show that the employees of the insured being carried in the vehicle are covered.

20. Shri George Cherian, learned Senior Counsel submitted that

the decision of the Apex Court in **Asha Rani's case** {(2003) 2 SCC 223} is an answer to the point raised by the appellant herein. Actually that was also a case of non coverage of passengers which is definitely not the proved case herein. Therefore, even going by the judgment in **Sanjeev Kumar Samrat's case** (2013 (1) KLT 41 - SC), an employee who comes under sub-clause (i)(c) of Section 147 of the Act and is carried in the vehicle will be covered by the statutory policy.

21. A Division Bench of this Court examined a similar question in the judgment reported in **National Insurance Co. Ltd. v. Mohammed Ali** (2012 (4) KLT 633). Therein, the vehicle was a goods carriage vehicle, viz. a tractor-cum-trailer. The deceased was employed as a workman and in the accident he died. It was held that being an employee, he will be covered under the proviso to Section 147 of the Act. The insurance company contended otherwise and various decisions of the Apex Court were considered by the Division Bench. After examining the question in detail, the Division Bench considered the effect of clause (i)(c) of the proviso to Section 147 of the Act. It was held as follows in paragraph 14:

"14. Therefore a perusal of the aforesaid proviso would show that intention of the Parliament is that in order to comply with a requirement of a valid Act policy, the contract of insurance must provide for coverage in respect of death or bodily injury caused to satisfy the three categories of employees, formulated in Clause (a) to (c) of the proviso. They are as follows:

1. Drivers engaged employees.
2. Conductors of a public service vehicle or person examined as ticket examiner.
3. Any person carried on a goods carriage.

While it is true that the definition of a goods carriage as contained in the Motor Vehicles Act is such that it does not contemplate carrying any person, the words employed in Clause (c) of the proviso does not leave us in any doubt that as far as the liability under the Workmen's Compensation Act is concerned with which the proviso is concerned, Parliament contemplates employees who may be travelling in a goods carriage. We are unable to limit the benefit of the proviso to only the driver or to the conductor/ticket examiner. If the arguments of the appellant were accepted that only the driver and conductor, ticket examiner, are to be comprehended within the proviso there was no need at all to frame clause

> (c). Also the very fact that the legislature used the words "or persons carried on a goods vehicle" itself shows that it is intended to cover not the driver but somebody other than the driver. No doubt he must be an employee. This interpretation which we have placed does not go contrary to the dictum laid down by the Apex Court in any of the decisions cited before us. The distinction in regard to the insurer's liability under the Workmen's Compensation Act has been succinctly brought out in decision of the Apex Court itself which we have adverted/extracted [paragraph 12 of the decision reported in *New India Assurance Co. Ltd. v. Vedwati* (2007 (2) KLT 219 (SC) (supra)].

The argument that only driver and conductor are are to be comprehended within the proviso, was rejected and held that if the said argument is accepted, there was no need at all to frame clause ©. The true intendment of the words "or persons carried on a goods vehicle" were also considered and it was held that "it is intended to cover not the driver but somebody other than the driver, but he must be an employee. This interpretation which we have placed does not go contrary to the dictum laid down by the Apex Court in any of the decisions cited before us." The above interpretation is significant to understand the meaning of the said provision. After examining the permit, in paragraph 16 it was held that the deceased would be an employee carried in the vehicle. In paragraph 17 it was held that he will come within the meaning of clause © of the proviso to Section 147. Of course, the said case was considered under the Workmen's Compensation Act also.

22. In an earlier decision of a Division Bench of this Court in **Mathai's case** (2003 (2) KLT 542) it was held that the persons employed in connection with the transportation and unloading of the goods carried in the vehicle by the owner of the vehicle, will come within the definition of "workman" in S.2(n) of the Act and they are covered under the policy. In paragraphs 4 and 5 it was held as follows:

> "Necessarily, the owner of the vehicle has to employ some persons for unloading the goods. The persons so employed for unloading the goods carried in the vehicle will necessarily become his workers. Four workers, other than the driver, were covered by the Act only policy. Necessarily they, being

> employed in connection with the transportation and unloading of the goods carried in the vehicle by the owner of the vehicle, they will come within the definition of "workman" in S.2(n) of the Act. An Act only policy admittedly covers the workers to the extent insured. A workman has got two options, one under the Motor Vehicles Act and another under the Workmen's Compensation Act. When he has got the above mentioned options, he can opt for S.167 of the Motor Vehicles Act, 1988."

In the light of these decisions, it can be safely concluded that the proviso to Section 147(1)(i)(c) will squarely apply in respect of persons carried in the goods carriage vehicle who are employees of the insured. They cannot be termed as gratuitous passengers at all, as they were travelling as such, but were loading and unloading workers being carried in the vehicle by the insured. The same is the marked distinction. Otherwise, Section 147(i)(c) will not have any meaning at all.

23. Learned Senior Counsel further submitted that only persons carried in the cabin are covered. This argument was rejected by the Tribunal and it was held that such a restriction is not there in the

permit or in the policy. In paragraph 21, it was held that even in Ext.B2 the seating capacity in the cabin has not been mentioned and therefore travelling of two loading and unloading workers employed by the first respondent in the platform of the lorry is impliedly permitted. We do not find any reason to disagree with the above view, particularly in the light of the statutory setting as well as on an interpretation of Exts.B1 to B3. In the written statement such a contention has not been raised.

24. Endorsement No.IMT 39 goes to show that the insurer has undertaken to indemnify the insured against his legal liability under the Workmen's Compensation Act , 1923, the Fatal Accidents Act, 1855 or at common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured and not exceeding seven in number. The finding regarding the guidelines of the Tariff Advisory Committee is that additional premium of Rs.25/- per employee is to be paid, but the premium

chargeable is limited to the total number of such employees registered to be carried in the vehicle. Ext.B2 provides the number of such employees as three which includes driver also. Herein, the additional premium paid is Rs.50/-. Thus, the Tribunal rightly held that the liability of the third respondent is limited to two workmen employed by the first respondent in the vehicle. Shri George Cherian submitted that the proviso to Section 147(1)(i) provides for coverage under the Workmen's Compensation Act and the Endorsement IMT 39 showing payment of additional premium relates to liability wider than that covered under Workmen's Compensation Act to driver and cleaner and therefore it will not apply herein. In the light of the clear terms of Endorsement IMT 39 which we have already noted by which the loading and unloading workers are also covered under the same, we cannot agree with the above submission of the learned Senior Counsel. The additional premium as noted by the Tribunal in paragraph 15 of the award, is Rs.25/- per employee and it is not in respect of the driver or cleaner alone but also in respect of persons employed for loading and unloading, as found rightly by the Tribunal.

The permitted workers will come definitely under Section 147(1)(i)(c) of the Act and the accident occurred in the course of their employment.

25. The Tribunal has chosen to find the liability in favour of the insurance company in respect of the higher awards in O.P.(MV) Nos.829/2003 and 834/2003 and in other cases the liability has been fastened on the owner and driver. The finding of the Tribunal that two employees will be covered under the policy, cannot therefore be found illegal on any terms, in the light of the law laid down by the Apex Court and this Court.

26. M.A.C.A.Nos.2357, 2358, 2359, 2378 and 2379 of 2010 are filed by the driver and owner of the vehicle. Their contention is that the insurance company is liable to meet the liability to more than three persons, in the light of IMT 39 in the policy, viz. 7 workers for loading and unloading work. The Tribunal, as we have already noticed, has taken the view by relying upon Ext.B2 permit, that the registration is for carrying three workers and that the liability of the insurance company to pay compensation to the employee is limited to

the registered number of employees permitted to be carried in the vehicle. We find that the above view cannot be said to be incorrect for any reason. Therefore, the plea of the appellants in those appeals cannot be sustained.

Accordingly MACA Nos.2281/2010 and 2287/2010 filed by the insurance company are dismissed and the appeals filed by the owner and driver of the vehicle are also dismissed. The parties will suffer their costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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