IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 2269 of 2008 ( )

AGAINST THE AWARD IN OPMV 280/2004 of MACT MUVATTUPUZHA DATED 27-05-2008
APPELLANT(S):PETITIONERS
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1. PAILY
PAREKUDIYIL HOUSE, VADATTUPARA KARA
KUTTAMPUZHA VILLAGE, KOTHAMANGALAM.

2. AMMINI, 53 YEARS, W/O.PAILY
PAREKUDIYIL HOUSE, VADATTUPARA KARA
KUTTAMPUZHA VILLAGE, KOTHAMANGALAM.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):RESPONDENTS
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1. BABU @ SUBHASH K.N.
S/O.K.N.NARAYANAN, KUZHIKOOTTAYIL HOUSE
VADATTUPARA KARA, KUTTAMPUZHA VILLAGE
KOTHAMANGALAM(DRIVER OF THE VEHICLE LOTTY
NO.KRF 885).

2. GEEJAN JOSEPH, S/O.JOSEPH MICHAEL
CHERAMALAKKAL HOUSE, CHELANAM PO.
KOCHI-8(OWNER OF THE VEHICLE LORRY NO.KRF 885

3. BRANCH MANAGER, UNITED INDIA INSURANCE
CO.LTD., MUVATTUPUZHA BRANCH (POLUCY NO.
101101/31/03/02680)

R,R1& 2 BY ADV. SRI.VAKKOM N.VIJAYAN
R,R1 & 2 BY ADV. SMT.REEJA HARI
R,R1 & 2 BY ADV. SMT.V.RENJU
R,R1 & 2 BY ADV. SRI.P.ANIYAN
R,R1 & 2 BY ADV. SMT.REENA.C.STEPHENSON
R,R1 & 2 BY ADV. SMT.M.A.RAMITHA
R,R3 BY ADV. SRI.S.ARUN RAJ
R,R2 BY ADV. SRI.P.K.PADMANABHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.2269 of 2008

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Dated this the 29th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants herein are the parents of deceased Deljith Paul who died in a motor vehicle accident on 6.12.2003 at about 2.30 p.m. at Pandanpara in Edamalayar Forest Division of Kuttampuzha Village of Kothamangalam Taluk. The Tribunal took the view that the insurance company is not liable under Ext.B1 policy.

2. The deceased was a headload worker and was aged 22 years at the time of accident. He was earning a monthly income of Rs.5,000/-. The vehicle was loaded with teak poles for unloading through the forest road at Pandanpara. He was seated in the cabin. The driver of the lorry suddenly swerved the lorry to the right side and the lorry overturned causing the deceased to fall down and he sustained serious injuries. Before the Tribunal, respondents 1 and 2 did not file any written statement and the insurance company contended that the

vehicle was being used in gross violation of the permit, as there were six persons in the lorry. It was also contended that the deceased was a gratuitous passenger in the vehicle not covered by the policy. It is also contended that even if he was a loading and unloading worker, he was not entitled to travel in the vehicle and he was not the owner or representative of the goods carried in the vehicle.

3. Before the Tribunal, one witness was examined as P.W.1 and the insurance company produced Ext.B1 policy. They did not adduce any oral evidence. Exts.A1 to A7 were marked on the side of the claimants. Ext.A6 is the membership card No..768 issued by the Kerala Forest Labour Union, Thodupuzha to the deceased. The vehicle was having a liability only policy.

4. The evidence of P.W.1, the Secretary of the local union was that the union had taken the job of loading and unloading of teak poles stacked at many portions and he hired the vehicle and paid the rent. It was also deposed that the deceased was engaged for the purpose of loading. He was travelling as the representative of the union. The Tribunal found that the case spoken to by P.W.1 could not be taken on the face value, since the union has not produced any accounts to prove

the hire charges paid for the lorry. Finally, it was held that the insurance company is not liable.

5. In the course of discussion, the Tribunal considered the endorsement in the policy including IMT 39. It was held that the said endorsement can apply only if additional premium is paid. Therefore, in the absence of any evidence to show payment of additional premium in Ext.B1, the same also was not accepted. The compensation fixed by the Tribunal is Rs.2,49,700/-.

6. It is contended by the learned counsel for the appellants that as far as the quantum of compensation is concerned, the Tribunal committed an error in not taking the age of the deceased and adopting the multiplier based on the age of the parents. Reliance is placed on the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC). The Tribunal has adopted the monthly income as Rs.1,500/- and one third was deducted for personal expenses of the deceased. An amount of Rs.2,000/- has been granted as expenses for transport, Rs.5,000/- for funeral expenses, Rs.200/- for damage to clothing and articles, Rs.7,500/- for pain and suffering and Rs.7,500/- for emotional loss and attachment was granted.

7. Learned counsel for the appellants relying upon the dictum laid down by this Court in **Nazeema v. Sebastian** (1987 (1) KLT 370) and that of the Apex Court in **Hanumangouda v. United India Insurance Company Ltd. and others** {(2014) 9 SCC 341} and by referring to Clause 10(a) of the Indian Motor Tariff, contended that at any rate, the deceased was under a contract of employment for loading and unloading of goods. It is submitted that the policy Ext.B1 will show that in the face page itself certain endorsements have been made. It is clearly stated that "IMT Endorsement Numbers printed herewith attached hereto 48, 17, 39." Learned counsel for the appellants submitted that IMT 39 was relied upon before the Tribunal and for want of payment of additional premium, it was not relied upon. The emphasis made by the learned counsel for the appellants is that in a goods vehicle like a lorry, it need not be that loading workers should be employed by the insured to get coverage under the policy. It can be employees of the hirer also. What is relevant is only to find out whether the person was working under a contract of employment. It is submitted that otherwise it will amount to doing violence to the statutory provisions. Learned counsel relied upon the provisions of

Section 147 of the Motor Vehicles Act to contend for the position that such workers also will be covered by the policy. He particularly relied upon the provisions of Section 147(1)(b) of the Act which reads as follows:

> "147. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--
>
> (a)..........
>
> (b)insures the person or classes of persons specified in the policy to the extent specified in sub-section (2).
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;
>
> 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) engaged in driving the vehicle, or

(b)if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

© if it is a good carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.-- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

8. Learned counsel for the insurance company vehemently contended that the endorsement in IMT 39 will not apply, since there is no evidence to show the payment of additional premium. It is also submitted that the said endorsement will help only the employees of the insured who are covered under the Workmen's Compensation Act for making them eligible to claim amounts more than that is provided under the provisions of the said Act.

9. Learned counsel for the insurance company relied upon the judgment of the Apex Court in **Sanjeev Kumar Samrat v. National Insurance Company Ltd. and others** (2013 ACJ 1) in this context. It is submitted that the deceased being a passenger of the goods vehicle, he cannot get coverage. It is also submitted that the claimants did not successfully adduce evidence to show the contract under which the vehicle was put to use.

10. As far as the evidence of P.W.1 is concerned, even though the Tribunal disbelieved the version that the vehicle was hired by the union, the entire evidence cannot be thrown out. His evidence will throw light into one aspect that the vehicle was used for carrying loads from the forest and the deceased was working obviously as a loading

and unloading worker. The vehicle was used for carrying teakwood logs and Forest Department is the owner of the goods. When the unfortunate accident occurred he was in the cabin and was thrown away. It is evident, therefore, that he was not travelling as a passenger. Our conclusion as above is justified in the light of the fact that it was in a forest road that the accident occurred. It is clear from Ext.A1, F.I.R., the vehicle was plying through the Forest coupe. Therefore, nobody can normally be expected to travel through such a road as a mere passenger. This also justifies the conclusion that the vehicle was definitely used for carrying logs and that part of the evidence of P.W.1 supports the same. It was loaded with teak poles also. He was a card holder as headload worker which is proved by Ext.A6. Therefore, as the contract of employment is proved and he was engaged in connection with such a type of work of loading and unloading logs, the question is whether he will be covered by the policy. In the judgment of the Apex Court in **Hanumangouda's case** {(2014 (9) SCC 341} the clause considered is the following:

> "Add: for LL to persons employed in connection with the operation and/or loading/unloading of motor vehicle IMT 17."

The Apex Court, by accepting the first limb, viz. persons employed in connection with the operation, held in the particular facts of the case that the deceased was accompanying the goods in transit for the purpose of delivery of goods. In this case, we will be justified in concluding that as far as the deceased is concerned, he was employed for loading and unloading goods, viz. teakwood logs under a contract of employment.

11. The vehement argument raised by the learned counsel for the insurance company in this context is that, then there should be definite evidence to prove the contract itself. We cannot agree. The accident has been proved by the claimants. Ext.A1 is the copy of the First Information Statement also. The averments in the claim petition as well as the contents of Ext.A1 and the evidence of P.W.1 will prove the accident and the engagement of the deceased as a loading worker.

12. Whether the policy covers such a person, is the next question. Herein, we have perused the terms of the policy. The limits of liability as well as the clause containing endorsements are the following:

> "Limits of liability:
>
> Under Section -II(i) in respect of any one accident : As per

Motor Vehicles Act, 1988

Under Section - II(ii) in respect of any one claim or series of claims arising out of one event: Rs.750000

IMT Endorsement Numbers printed herewith attached hereto 48, 17, 39.”

Apart from the same, under the printed conditions, there is one clause containing general exceptions. We are only concerned with the said clause containing “General Exceptions” which we extract below:

“1. 1.The Company shall not be liable in respect of any claim arising whilst the vehicle insured herein

(a) being used otherwise than in accordance with the “Limitations as to Use'

or

(b) being driven by or is for the purpose of being driven by him/her in the charge of any person other than a Driver as stated in the Driver's Clause

2. The Company shall not be liable in respect of any claim arising out of any contractual liability.

3. Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death arising out of and in the course of employment of a person in the employment of the insured or in the employment of any person who is indemnified under this policy or bodily

injury sustained by such person arising out of and in the course of such employment.

4. Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises.

Clause 4 above is important and will apply herein. Clause 3 covers employees of insured. Clause 4 will show that the company will not be liable in respect of death or bodily injury to any person, but they will be liable to a person/passenger carried by reason of or in pursuance of a contract of employment. Such being the clause, according to us, a worker like the deceased who was engaged under a contract of employment, will definitely be covered by the said clause. There is no contra evidence on the part of the insurance company. It is well settled that the clauses in the policy are within the special knowledge of the insurer and the burden is on them to prove various aspects. Therefore, the above clause will definitely be attracted to the facts of this case.

13. As far as the goods vehicle is concerned it will be put to use in different circumstances either by the insured or by the person who hires the vehicle and in this case it is evident that the same was used for carrying forest produce, viz. teakwood logs. The presence of the deceased in the lorry, going by the admitted facts of this case, will only be in pursuance of a contract of employment. The company had taken different alternate contentions in the written statement including that the deceased was a mere gratuitous passenger, that he was not the owner of the goods and that he was not the representative of the goods. According to us, these alternate contentions, even if were there, the case proved by the claimants will definitely show that he was in the cabin of the lorry in connection with a contract of employment. The vehicle was coming after loading the goods.

14. Even though the vehement argument raised by the learned counsel for the insurance company is that more evidence was required to prove the contract of employment, in a proceedings like this, the Tribunal and this Court will be justified in accepting the case proved by the claimants that too in the special circumstances of the case. For that purpose, we do not consider it necessary to remand the matter also.

15. In **Nazeema's case** (1987 (1) KLT 370), the question was considered under the provisions of Section 95(1) and proviso (ii) of the Motor Vehicles Act, 1939 and there is some difference under the provisions of the new Act.

16. The decision of the Apex Court in **Sanjeev Kumar Samrat's case** (supra) relied upon by the learned counsel considered the following question:

> "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 provisions contained under Section 147 of the Motor Vehicles Act, 1988."

In paragraph 24, it has been held as follows:

> "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."

17. Even though heavy reliance is placed by the learned counsel for the insurance company on the above dictum, on the special facts of this case and the conditions in Ext.B1 policy, according to us, the deceased would be covered. Ext.B1 is not a statutory only policy unlike the policy considered in **Sanjeev Kumar Samrat's case** (supra). the situation herein is somewhat identical to the facts of **Hanumangouda's case** {(2014) 9 SCC 341}. Apart from the same, the policy herein is not styled as 'act only' policy, but it is styled as 'liability only' policy. As far as the payment of any additional premium for getting the benefit is concerned, there is no plea to that effect by the insurance company also. As we have already noticed, it cannot be treated as a statutory only policy in the light of the various endorsements in the policy itself. The contention by the insurance company herein is that the deceased was a passenger. Normally, a passenger will be a person who will be taken in the vehicle either on payment of charges or gratuitously, but the circumstances of this case do not warrant such a conclusion that he was travelling as a mere

passenger in the lorry, in the light of the evidence already discussed above.

18. As far as the quantum of compensation is concerned, the deceased was a loading worker. The income assessed by the Tribunal for the purpose of granting compensation is Rs.2,500/-. For assessing the income, the evidence of P.W.1that he used to get employment for a period of six months in a calender year,was relied upon. It is clear that he was a headload worker. What is indicated by P.W.1 is the nature of the work they will get in the forest area. That does not mean that he will be deprived of work or will be resting himself for the remaining period of six months. The accident occurred in the year 2003. We will be justified in assessing the monthly income at the rate of Rs.3,500/-. The multiplier will be 18 in such a case, going by the decision in **Sarla Verma's case** (supra). He was a bachelor and therefore 50% will have to be deducted for personal expenses. Therefore, the dependency compensation will have to be calculated accordingly. We also are of the view that the Tribunal was not correct in reckoning the age of the parents fo adopting the multiplier in the light of the above judgment of the Apex Court. The Tribunal has granted Rs.5,000/- for funeral

expenses and in the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 -SC) we grant an amount of Rs.25,000/- towards funeral expenses and for loss of love and affection also, we grant an amount of Rs.1 Lakh in tune with the said judgment. The Tribunal granted Rs.7,500/- for pain and suffering which we confirm.

Accordingly, the total compensation will be as follows:

Head of claim	***Amount awarded by the Tribunal***	***Modified award passed by this Court***
Loss of dependency	220000	378000
Transport to hospital	2000	2000
Funeral expenses	5000	25000
Damage to clothing & articles	200	200
Pain and suffering	7500	7500
Loss of love and affection	7500 + 7500	100000
Total		512700

(Rupees Five lakhs, twelve thousand and seven hundred only)

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition. Since we find that the insurance company is liable to indemnify the insured, the compensation will be paid by the insurance company. There will be a direction to the insurance company to deposit the amount within a period of three months and we permit the appellants to withdraw the amount also. Any amount towards court fee will be recovered by the Tribunal from the amount to be deposited by the insurance company.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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