AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 70 of 2015

{Arising out of order dated 26.12.2013 passed by the learned Commissioner, Employees Compensation-Cum-Labour Court, Korba (C.G.) in Case No. 25/W.C.Act/2011/Fatal}

1. Smt. Santoshi Sahis, wife of Ramesh Sahis, aged about 38 years.
2. Kumari Jyoti, daughter of Ramesh Sahis, aged about 17 years.
3. Ku. Kiran, daughter of Ramesh Sahis, aged about 14 years.
4. Vickey, son of Ramesh Sahis, aged about 12 years.
   Appellants No. 2 to 4 are minor, through natural guardian mother Smt. Santoshi Sahis, wife of Ramesh Sahis, resident of Gevra Basti, Chunchuni, P.S. - Kusmunda, Tahsil & P.S. Katghora, District Korba (C.G.)

---- Appellants

Versus

1. Vijay Kumar Verma, son of Vipin Kumar Verma, resident of Ghuddeva Colony, P.S. - Bankimongra, Tahsil-Katghora, District Korba (C.G.)
2. The Oriental Insurance Company Limited, through the Divisional Manager, The Oriental Insurance Company Limited, Divisional Office, Geetanjali Bhawan, Korba, Tahsil and District Korba (C.G.)

---- Respondents

For Appellants	:	Shri Sachin Singh Rajput, Advocate.
For Respondent No. 2	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice
28.08.2020

1. - Whether a **Helper/Cleaner** engaged by the owner of a Goods Carriage in the vehicle could be ousted from the purview of statutory coverage under the policy issued by the Insurer, stating that no additional premium was collected to cover such risk in respect of the accident involving the vehicle?

2. - Whether the learned Commissioner, Employees Compensation-Cum-Labour Court, Korba (C.G.) (for short, 'Commissioner-Labour Court') is justified in awarding interest @ 12% per annum on the quantum of

compensation awarded only '**from the date of filing of the application**', instead of granting the same with effect '**from the date of the accident**'?

3. These are the points involving substantial questions of law to be answered by this Court in this appeal preferred by the Claimants against the verdict passed by the Commissioner-Labour Court as aforesaid, absolving the Insurer of the vehicle from satisfying the liability.

4. With regard to the factual matrix, it is to be noted that, on 17.11.2008, the deceased Deepak was proceeding in the Truck bearing No. C.G. 04 ZC 0657, belonging to the 1st Respondent/Insured as a helper/cleaner engaged by the owner of the vehicle. The vehicle was covered under a valid policy insured by the 2nd Respondent/Insurance Company. While so, by late in the night, when the vehicle reached the place of occurrence, some unknown persons stopped the vehicle, got into it and murdered both the driver and the helper/cleaner by name Deepak and fled away with the valuables and the vehicle; later leaving the corpse of the deceased elsewhere. On getting information, the Police registered a crime and thus the criminal law was set in motion. With regard to the loss of lives of the driver and Helper/Cleaner, separate claim petitions were filed before the Commissioner-Labour Court by the legal representatives, contending that the murder of the deceased was an accident arising 'out of' and 'in the course' of their employment and hence they are liable to be compensated by the owner of the vehicle. By virtue of the existence of a valid policy issued by the 2nd Respondent, the liability in this regard was sought to be satisfied by the Insurer.

5. Based on the pleadings and evidence brought on record, the Commissioner-Labour Court arrived at a finding that the death of the deceased was due to an accident arising 'out of' and 'in the course of'

employment under the 1st Respondent. Based on the relevant factors, compensation was fixed and it was directed to be satisfied with interest as specified. In the case filed by the legal representatives of the deceased driver, the liability was mulcted on the Insurance Company, based on the policy; correctness of which has been put to challenge by filing an appeal by the Insurance Company as MAC No. 53 of 2020. The present appeal is in respect of the verdict passed by the Commissioner-Labour Court in the claim petition filed by the legal representatives of the deceased helper/cleaner.

6. Shri Sachin Singh Rajput, the learned counsel appearing for the Appellants/Claimants submits that the finding and reasoning given by the Commissioner-Labour Court to absolve the Insurance Company, holding that the Helper/Cleaner did not come within the purview of the policy issued and that no wider coverage was provided by accepting any additional premium is not correct. The learned counsel for the Appellants/Claimants submits that another substantial question of law is also involved in the instant case, as to whether the Commissioner-Labour Court was justified in limiting the monthly income of the deceased only as Rs.2,200/- per month. The said submission is made with reference to the fact that the Commissioner-Labour Court has reckoned a higher monthly income in the connected case involving the death of the driver (with reference to the minimum wage payable as on the relevant date); whereas such a course has not been pursued in the instant case.

7. According to the learned counsel, the claim of a Helper/Cleaner engaged by the owner of the Goods Carriage very much comes within the purview of the 'Act only policy', by virtue of the definition of term 'workman' defined under Section 2(n) (ia) (c) of The Employee's Compensation Act,

1923 (for short, 'Act of 1923'). Reference is also made to the scope of the statutory coverage in terms of the Section 147 of the Motor Vehicles Act, 1988 (for short, 'Act of 1988') with particular reference to the proviso (ia) (c). Reliance is sought to be placed on the judicial precedents as per the decisions rendered by the Apex Court in ***Ved Prakash Garg vs. Premi Devi & Others*** reported in **1997 (8) SCC 1** and in the case of ***Sanjeev Kumar Samrat vs. National Insurance Company Ltd. & Others*** reported in **AIR 2013 SC 1125**.

8. According to the learned counsel, the Commissioner-Labour Court was not right in awarding interest only from the 'date of application', which ought to have been from the 'date of accident' in view of the specific provisions in the statute and the law declared by the Apex Court in ***National Insurance Company Ltd. vs. Prembai Patel & Others*** reported in **AIR 2005 SC 2337** and also in the case of ***K. Sivaraman & Others vs. P. Sathish Kumar & Another*** reported in **AIR 2020 SC 954**.

9. Shri Raj Awasthi, the learned counsel representing the 2nd Respondent/Insurance Company submits that the policy issued by the Insurer was specific to the effect that it was having no wider coverage in respect of a person like the deceased engaged as a Helper/Cleaner. With reference to the schedule of premium collected, the learned counsel submits that no additional premium was collected in respect of any Helper/Cleaner and in the said circumstance, the verdict passed by the Commissioner-Labour Court is perfectly in order and warrants no interference. The learned counsel also points out that since the Commissioner-Labour Court has granted interest on the quantum of compensation right from the date of filing the application, no interference is warranted under this head as well. With regard to the submission

made by the learned counsel for the Appellants as to the wrong fixation of income, the learned counsel submits that the income has been fixed correctly by the Commissioner-Labour Court and that it does not involve any question of law.

10. The first question to be considered is whether the deceased Helper/Cleaner would come within the purview of 'Act only policy' or not and whether non collection of any additional premium to provide added coverage to such person is fatal to the case of the Appellants. Section 146 of the Act of 1988, which deals with the necessity to have insurance coverage of any motor vehicle against third party risk, clearly stipulates under sub Section (1), that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI.

11. Section 147 of the Act of 1988 speaks about the requirements of policies and limits of liability. For the purpose of this case, reference to Section 147 (1) alone is sufficient, which is extracted below:

> "**Section 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) is issued by a person who is an authorised insurer; and
>
> (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 of 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 conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

12. After stipulating the mandatory insurance to be obtained to cover the third party risk as specified under Clauses (a) and (b) of sub Section (1) of Section 147 of the Act of 1988, the proviso (i) thereunder stipulates that the policy shall not be required to cover the liability in respect of any employee of a person other than the persons mentioned specifically under sub Clauses (a), (b) and (c) thereunder; the extent of which shall be as arising under the Workmen's Compensation Act, 1923 (now renamed as The Employee's Compensation Act, 1923). By virtue of sub Clause (c) of the proviso (i) under Section 147(1) of the Act of 1988, the employees of the Insured carried in the Goods Carriage also get coverage under the statutory policy. Since the liability under Section 147(1) of the Act of 1988 towards the employee of the Insured under such circumstance is limited to the extent as arising under the

Workmen's Compensation Act, 1923 (now renamed as The Employee's Compensation Act, 1923), it is necessary to make a reference to definition of the term 'workman' under Section 2(n) of the Act of 1923.

13. Section 2(n) of the Act of 1923 (which came to be omitted by Act 45 of 2019 along with introduction of a new term as 'employee' defined under Section 2(1)(dd) with effect from 18.01.2010) is relevant in the instant case, since the accident was on 17.11.2008. The term 'employee' has to be understood as defined under Section 2(n) defining the term 'workman'. The said provision reads as follows:

> “Section 2(n) “workman” means any person who is-
>
> (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
>
> (ia) (a) a master, seaman or other member of the crew of ship,
>
> (b) a caption or other member of the crew of an aircraft,
>
> (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.”

Even a cursory reading of the above provision would clearly reveal, as defined under sub Clause (ia) (c), that the term 'workman' means any person who is recruited as Driver, **Helper**, Mechanic, **Cleaner** or in any other capacity in connection with a motor vehicle.

14. Coming back to the instant case, there is no dispute with regard to the status of employment of the deceased, who was admittedly engaged as a Helper/Cleaner by the 1st Respondent owner of the Goods Carriage. This being the position, it has to be held that the deceased Helper/Cleaner is having automatic/statutory coverage under the policy

issued by the 2nd Respondent/Insurance Company and collection of any additional premium to cover such risk was not necessary; which otherwise would only be contrary to the scheme of the statute.

15. As to the case law cited, the Apex Court had occasion to consider the scope of Insurance Company's liability to pay **compensation** in case of death or injuries to the employees (Driver and Cleaner in the said case) while on duty alongwith the liability to satisfy **interest** and **penalty**. In ***Ved Prakash Garg vs. Premi Devi & Others*** reported in **(1997) 8 SCC 1**, the specific question mooted for consideration was to the following effect:

> "Where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third-party accident claims under Motor Vehicles Act, 1988 (hereinafter referred to as 'the Motor Vehicles Act') and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') in connection with such motor accident, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4-A(3) of the Compensation Act."

After elaborate discussion, the said question was answered as given in paragraph 19, which is reproduced below:

> "19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the

> insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

The gist of the conclusion is that the Insurance Company is liable to satisfy the **compensation** in respect of the **Driver** and **Cleaner** involved with interest, whereas '**penalty**' to be satisfied is the liability of the Insured/Employer.

16. In the case of ***Sanjeev Kumar Samrat (supra)***, the question considered was:

> "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 Section 147 of the Motor Vehicles Act, 1988 (for brevity "the Act")."

The statutory requirement/extent of coverage under Section 147 of the Act of 1988 was discussed in detail with particular reference to the meaning of term 'employee' as dealt with under Section 147(1)(b)(i) of the Act of 1988. The Apex Court has observed in 'paragraph 19', with reference to the relevant provisions of law and the precedents referred to already, that the categories of employees who have been enumerated in the sub clauses (a), (b) and (c) of the proviso (i) to Section 147(1) of the Act of 1988 are the Driver of the vehicle or the Conductor of the vehicle if it is a public service vehicle, or in examining the tickets on the vehicle and if it is a Goods Carriage, being carried in the vehicle.

17. Observing (in paragraph 20) that the Insurance Company is not under statutory obligation to cover all kinds of employees of the Insured, except as specified therein (in whose case the extent of liability shall be as arising under the Act of 1923), it was noted in 'paragraph 24' as follows:

> “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.”

While holding that the liability of the Insurance Company will not extend to employees of the owner of the goods travelling in the vehicle alongwith him, there is a categoric declaration to the effect that the Insurer will be liable only in respect of the <u>employees of the Insured</u> carried in the Goods Carriage. Applying the above law, to the given set of facts and circumstances, it is quite clear that the deceased employee engaged as Helper/Cleaner in the Goods Carriage of the insured was entitled to have automatic coverage under the 'Statutory/Act only policy' and no additional premium was required to be collected, to get coverage. We find that the Commissioner-Labour Court has gone wrong in arriving at the finding to the contrary.

18. The Apex Court (3 Members Bench) considered the scope of the Insurance Policy issued to the cover the 'Act liability' in respect of a

motor vehicle with reference to the extent as arising under the Act of 1923 and has held in ***Kerala State Electricity Board & Another vs. Valsala K. & Another*** reported in **AIR 1999 SC 3502** that the eligibility to get compensation for the particular class of employees under sub-clauses (a), (b) and (c) of proviso (i) of clause (b) of sub Section (1) of Section 147 of the Act of 1988 includes the employees of the insured, such as '**Driver/Helper/Cleaner**'. The Court held that the coverage to such employees, to the extent as payable under Act of 1923, is <u>automatic</u> in the case of employees under sub-clauses (a), (b) and (c) of proviso to Section 147(1) (b) of the Act of 1988, but if any wider coverage was required beyond the extent under the Act of 1923, the owner of the vehicle was to take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentioned “a policy for Act liability” or 'Act Policy', the liability of the Insurance Company, qua the employees as aforesaid, would not be unlimited, but would be limited to that arising under the Act of 1923. The aforesaid decision was referred to in the subsequent verdict passed by a '2 Judges Bench of the Apex Court' in ***Sanjeev Kumar Samrat (supra)***. In the said circumstances, we answer the Substantial Question of Law in favour of the Appellants/Claimants holding that the deceased **Helper/Cleaner** comes within the policy issued to cover the statutory liability.

19. Coming to the question of interest, the Commissioner-Labour Court has awarded interest only from the 'date of filing the application'. The liability to satisfy 'interest' alongwith the compensation by the Insurer of the Goods Carriage under a policy issued to provide statutory coverage in terms of the Section 147 of the Act of 1988 has already been discussed with reference to the law declared by the Apex Court in ***Sanjeev Kumar***

Samrat (supra). That apart, way back in the year 1988, a Full Bench of the Kerala High Court had concluded in ***United India Insurance Company Ltd. vs. Alavi*** reported in **1998 (1) KLT 951 (FB)** that the injured workman becomes entitled to get compensation the moment he suffered personal injuries of the types contemplated by the provisions of the Act of 1923 and it is the amount of compensation payable 'from the date of the accident', that is relevant. In the case of ***Kerala State Electricity Board & Another vs. Valsala K. & Another*** reported in **AIR 1999 SC 3502**, a '3 Judges Bench' of the Apex Court affirmed the Full Bench verdict of the Kerala High Court, to the extent it was in accordance with the judgment rendered by the '4 Judges Bench' of the Supreme Court in ***Pratap Narain Singh Deo vs. Shrinivas Sabata & Another*** reported in **AIR 1976 SC 222**. The Full Bench of the Kerala High Court as well as the '3 Judges Bench' of the Apex Court in ***Valsala K. (supra)*** also held that, the benefit of amendment enhancing the compensation would not have any retrospective application, to the accidents that took place prior to the coming into force of the amendment (which aspect, may not have relevance in the instant case).

20. Referring to the case law on the point including in ***Thazhathe Purayil Sarabi & Others vs. Union of India & Another*** reported in **2009 (7) SCC 372** and in the case of ***Mohamadi & Others vs. Union of India*** reported in **2019 (12) SCC 389**, the Apex Court held that the relevant date for determination of compensation payable is the 'date of accident' and that the benefit of the Act 45 of 2009 would not apply to accidents that took place prior to its coming into force. It was on the basis of said finding (that the relevant date for granting the compensation is the 'date of accident') that the Apex Court concluded that the compensation payable shall be with interest @ 12% per annum from the 'date of

accident'. Since the legal position to satisfy interest is declared as from the 'date of accident', the date of filing the application has no sanctity or significance. As it stands so, the verdict passed by the Commissioner-Labour Court granting interest only from the date of application is liable to be modified and <u>it has to be with effect from the 'date of the accident'</u>. The substantial question of law is answered in favour of the Appellants/Claimants.

21. The learned counsel for the Appellants/Claimants submits that the monthly income reckoned by the Commissioner-Labour Court as Rs. 2,200/- to workout the compensation is not correct, being contrary to the 'minimum wage' reckoned in the connected case and as such, it involves another substantial question of law. The connected case was in connection with the death of the person engaged as the 'Driver' of the vehicle. No doubt, driving of vehicle is a skilled job with special knowledge and requires licence to drive the vehicle; whose minimum wage stipulated under the relevant statute stands on a different footing than the position of the deceased involved in the present case engaged as Helper/Cleaner. No materials have been brought on record, to ascertain the minimum wage payable in respect of the deceased Helper/Cleaner. The claim put forth by the Appellants, as to the monthly salary of the deceased is discernible from 'paragraph 3', which is reproduced below:

> “3. That, in claim petition, it is submitted by the appellants that the deceased Deepak Kumar was getting the monthly salary of Rs. 1,200/- and further getting Rs. 40/- per day as allowances.”

The Appellants concede that the deceased Deepak Kumar was getting only a Rs. 1,200/- per month, besides a sum of Rs. 40/- per day as the daily allowances. Even if it is presumed that the deceased

Helper/Cleaner was having work on all the days (excluding the Sundays) in every month, the daily allowance would come to a total of Rs. 40 x 26 = Rs. 1,040/-. This, when added to the admitted monthly salary of Rs. 1,200/-, the figure becomes Rs. 2,240/-. The Commissioner-Labour Court has already reckoned the monthly income as Rs. 2,220/- to workout the compensation by applying the relevant factor of Rs. 226.38/- and has awarded the compensation of Rs. 2,49,018/-. The possible difference, if at all any, is only to an extent of Rs. 40/- per month. This does not involve any question of law, much less a substantial question of law. The point is answered against the Appellants/Claimants.

22. In the light of the above discussion, we hold that the deceased Deepak Kumar engaged as **Helper/Cleaner** of the 1st Respondent/Owner in his Goods Carriage is entitled to be covered under the statutory policy issued in terms of Section 147 of the Act of 1988, to the extent liability arises under the Act of 1923; which hence is liable to be satisfied by the 2nd Respondent/Insurance Company. The Appellants are also entitled to get interest from the 'date of the accident'. The 2nd Respondent/Insurance Company is directed to workout the deficit amount towards the compensation with interest, which shall be deposited before the Commissioner-Labour Court, with notice to the Appellants herein, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent. No cost

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Brijmohan