IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 13TH DAY OF NOVEMBER 2023 / 22ND KARTHIKA, 1945

MFA (ECC) NO. 76 OF 2020

ECC 116/2017 OF INDUSTRIAL TRIBUNAL & EMPLOYEES COMPENSATION COMMISSIONER, KOZHIKODE

APPELLANT/2ND OPPOSITE PARTY

UNITED INDIA INSURANCE COMPANY LIMITED
REGIONAL OFFICE, HOSPITAL ROAD ERNAKULAM, COCHIN - 682 035, REPRESENTED BY ITS REGIONAL MANAGER.

BY ADVS.
JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY

RESPONDENTS/APPLICANT & 1ST OPPOSITE PARTY

1 ABDUL RAZAQUE O.V.
AGED ABOUT 52 YEARS,

2 RAJAN NAIR

BY ADVS.
SHRI.ANIL KUMAR K.P.
SRI.V.A.VINOD

THIS MFA (ECC) HAVING COME UP FOR HEARING ON 13.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Dated : 13th November, 2023

1. This appeal has been filed under Section 30 of the Employees Compensation Act 1923, by the second respondent in E.C.C.116/2017 on the file of the Industrial Tribunal and Employees Compensation Commissioner, Kozhikode against the order dated 14.2.2020.

2. The first respondent, who was the applicant before the Employees Compensation Commissioner, was a loading and unloading worker in the tipper lorry bearing registration No.KL-56/6300 owned by the second respondent. On 8.10.2015, while he was employed and engaged as loading and unloading worker and while he was loading coconut tree into the tipper lorry, it fell down on the body of the first respondent and he sustained injuries in the incident. He approached the Employees Compensation Commissioner claiming compensation by filing an application under Section 22 of the above Act. The appellant, namely United India Insurance Co.Ltd., admitted the policy but disputed the liability on the ground that the policy does not cover the risk of loading and unloading worker in the

tipper lorry. Rejecting the above contention, the Employees Compensation Commissioner awarded a compensation of Rs.1,04,000/- along with simple interest at the rate of 12% from 8.10.2017 till deposit and Rs.2,55,962/- towards treatment expense.

3. Aggrieved by the above order passed by the Employees Compensation Commissioner, the appellant preferred this appeal raising the following substantial questions of law :

> Whether the loading and unloading worker of the owner of the Tipper lorry comes under the coverage of the classes of employees covered under clause (c) of the first proviso to Section 147(1) of the M.V.Act, 1988 ?

4. Heard both sides.

5. Admittedly the first respondent was engaged by the second respondent as loading and unloading worker in his tipper lorry bearing registration No.KL-56/6300. On 8.10.2015, while he was employed and engaged as loading and unloading worker and while he was loading a coconut tree into the tipper lorry, it fell down on the body of the first respondent and he sustained injuries in the incident. According to the appellant,

Ext.B1 policy issued in favour of the second respondent does not cover the risk of loading and unloading worker in the tipper lorry. Since the first respondent is neither the driver, conductor nor cleaner of the tipper lorry, he is not entitled to get any compensation. Therefore, the learned counsel for the appellant prayed for setting aside the impugned order passed by the Employees Compensation Commissioner by allowing this appeal.

6. On the other hand, the learned counsel for the first respondent, relying upon clause (c) of the first proviso to Section 147 (1) of the Motor Vehicles Act, 1988, would argue that the said provision covers the risk of a loading and unloading worker also and as such, he prayed for dismissing the appeal.

7. The learned counsel for the appellant relied upon a decision of the Division Bench of this court in **Alagadurai vs. P.Immanuel Nasa Justin and Others (2009 (2) KHC 181)** and argued that since the first respondent was not being carried in the vehicle and he was only loading goods and the vehicle was in a stationary position, clause (c) of the first proviso to Section 147(1) of the MV Act will not in anyway help the first respondent. Paragraph 17 of the above

judgment relied upon by him is as follows :-

> "The scheme of the Act is very evident. Liability mentioned under Clauses (i) and (ii) of S.147(1)(b) of the Act must invariably be covered. But the policy shall not be required to cover actual claims for compensation of employees in respect of the death or bodily injury. But even in respect of such employees, if they come under Clauses (a) to (c) of proviso (i), the liability to the extent created under the WC Act of the insured must be covered under the compulsory 'Act only' policy issued by the Insurance Company. In respect of persons falling under (a) to (c) of proviso 1 of S.147(1), not the actual loss but only the amount payable under the WC Act will have to be paid and discharged by the Insurance Company. That appears to be the clear mandate of the Statute."

8. In this context it is also to be noted that from Ext.B1 policy, it can be seen that it is a package policy in which a sum of Rs.100/- was levied for the owner-driver and another Rs.100/- towards Legal Liability to Paid Driver IMT 28. In addition to the same, another Rs.75/- was levied towards Legal Liability to Non-Fare paying Passenger (Non-employee). It is to be noted that the first respondent alone was injured in the incident.

9. On the other hand, the learned counsel for the first respondent relied upon the decision of another

Division bench of this Court in **Oriental Insurance Co.Ltd v. Velayudhan and Others** (M.A.C.A.No.2281 of 2010, decided on 2.9.2015) in support of his argument that 'Act only policy' will cover the risk of loading and unloading workers also. In order to substantiate his contention that even when the vehicle is in stationary position, the Insurance Company is liable, he has relied upon the decision of this Court in **Mary v. Mathew (2003 (1) KLT 592)**. In the above decision, a Division Bench of this Court, relying upon another decision in **New India Assurance Co.Ltd v. Lakshmi (2000 (3) KLT 80),** held that even if the vehicle is parked or kept stationary or left unattended, if the accident has any proximity to the use of the motor vehicle, the Insurance Company is liable.

10. In **Velayudhan's** case (supra), the vehicle involved was a mini lorry and the accident occurred while it was going through the Aluva – Angamaly National Highway. The mini lorry hit the back side of a KSRTC bus causing it to turn down and thereby causing injuries to the claimants who were loading and unloading workers being taken in the above vehicle. After analyzing various decisions, the Division Bench held that “going by clause (c) (of the first proviso to Section 147 of the M.V.Act), 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."

11. In **National Insurance Co.Ltd. v. Mohammed Ali (2012 (4) KLT 633)**, relied upon in **Velayudhan's** case (supra), the vehicle involved was a tractor-cum-trailer. The deceased was employed as a workman in the vehicle and he died in the accident. The Insurance Company opposed the claim raised by the legal heir of the deceased. After examining the question in detail, in paragraph 14, the Division Bench held as follows :-

> "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, 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 decision 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 2007 (2) KLT 219 (SC) (supra)]."

12. The Division Bench in **Valuydhan's** case concluded thus :

"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."

13. In the instant case, the vehicle was stationary and the deceased was loading timber into the tipper lorry when he sustained injuries. As argued by the learned counsel for the appellant, at the time of the incident, the employee was not travelling in the goods carriage. The words used in clause (c) of the first proviso to Section 147((1) of the MV Act are: "any such employee – if it is a goods carriage,being carried in the vehicle". When the literal meaning of the words "any person carried in a goods carriage" is taken, it covers only persons travelling in the goods carriage.

14. However, it is to be noted that the vehicle involved in the present case being a tipper lorry is intended to carry goods. Only if the goods are loaded into the goods carriage, it can be transported from one place to another. When it reaches the destination, the goods are to be unloaded also. Therefore, loading and unloading of the goods transported in a goods carriage is to be treated as part and parcel of the purpose for which the goods carriage is intended to. Viewed from the above angle, it is to be held that loading and unloading of the goods in a goods carriage is inseparably connected with the usage of a goods

carriage. In the above circumstances, unless and until the persons loading and unloading the goods in a goods carriage are also covered under clause (c) of the first proviso to Section 147(1) of the MV Act, the purpose of the aforesaid provision will not be served, in its true spirit. In this context, it is also to be noted that, the Employees Compensation Act is a welfare legislation intended to provide for the payment by certain classes of employers to their employees of compensation for injury by accident. Therefore, I hold that the first respondent who was working as loading and unloading employee of the second respondent at the time of the accident squarely comes within the purview of clause (c) of the first proviso to Section 147(1) of the MV Act. I do not find any illegality or irregularity in the impugned order passed by the Industrial Tribunal and Employees Compensation Commissioner and as such, this appeal is liable to be dismissed.

In the result, the appeal is dismissed.

Sd/-

C.Pratheep Kumar,
Judge

Mrcs/8.11.2023.