

**(2024) 11 KL CK 0120**

**High Court Of Kerala**

**Case No:** MFA (ECC) No.29 Of 2010

Smt.Seetha Devi

APPELLANT

Vs

Smt.Jayalakshmi

RESPONDENT

**Date of Decision:** Nov. 29, 2024

**Acts Referred:**

- Workmen's Compensation Act, 1923 - Section 2(1)(n), 3(1)

**Hon'ble Judges:** G.Girish, J

**Bench:** Single Bench

**Advocate:** K.P.Sujesh Kumar, Jacob Sebastian, Vpk.Panicker

**Final Decision:** Allowed

### **Judgement**

G.Girish, J

1. The order dated 02.07.2009 of the Commissioner for Workmen's Compensation, Thiruvananthapuram in connection with the compensation

claimed for the death of one Rajesh Kumar in an accident, while driving an autorickshaw on 02.06.2006, is under challenge in this appeal.

2. The appellant herein, the mother of the deceased, was the applicant in the above claim petition filed before the Commissioner for Workmen's

Compensation as W.C.C.No.108/2006, and the respondents 1 to 3 in this appeal were the opposite parties 1 to 3 respectively. The first respondent is

said to be the employer of the deceased and the third respondent, the insurance company which issued a valid insurance policy to the autorickshaw

with Reg.No.KL-01 R 362, which met with the accident.

3. The first respondent had admitted the employer-employee relationship with the deceased, and also the fact that the accident happened while the

deceased was driving the autorickshaw in the course of employment. The claim of the appellant about the monthly wages of Rs.4,000/- received by the deceased from the first respondent, is also admitted by the first respondent. However, the third respondent strongly disputed the employer-employee relationship between the first respondent and the deceased. The third respondent also disputed their liability to compensate the deceased stating the reason that the deceased was not holding a valid driving licence to drive autorickshaw at the time of the accident.

4. Before the Commissioner for Workmen's Compensation, the appellant was examined as AW1 and six documents were marked in evidence as

Exts.A1 to A6. The Assistant Manager of third respondent Insurance Company was examined as DW1 and one document was marked as Ext.D1

from their part.

5. The learned Commissioner for Workmen's Compensation, after hearing both sides and evaluating the evidence on record, arrived at the following factual findings:

i) The deceased was employed as driver by the first respondent and he came under the definition of "workman" as envisaged under Section

2(1)(n) of the Workmen's Compensation Act.

ii) The deceased met with an accident on 02.06.2006 out of and in the course of his employment with the first respondent and sustained injuries leading to his death.

iii) The vehicle involved in the accident belonged to the first respondent and that it was having a valid insurance coverage with the third respondent at the time of accident.

iv) The deceased is entitled to get a lump sum payment of compensation under the Workmen's Compensation Act.

v) The monthly wages being received by the deceased from the first respondent was Rs.4,000/-.

vi) The eligible compensation to which the deceased is entitled is Rs.4,30,560/- (4,000 x 50 x 215.28 / 100).

vii) The deceased was not having a valid driving licence and badge to drive an autorickshaw at the time when the accident took place.

6. On the basis of the finding shown as item No.(vii) above, the learned Commissioner for Workmen's Compensation arrived at the conclusion that there was policy violation and hence the third respondent was not liable to indemnify the first respondent in connection with the compensation payable to the deceased. Accordingly, the learned Commissioner ordered the first respondent to pay the compensation amount with interest @ 12% per annum from the date of accident to the appellant. It is the aforesaid order which is under challenge in this appeal.

7. Heard the learned counsel for the appellant and the learned Standing Counsel for the third respondent.

8. The factual findings of the learned Commissioner for Workmen's Compensation enumerated as item Nos. (i) to (vi) hereinabove are beyond the scope of the present appeal. As regards the finding of the Commissioner shown as item No.(vii) above also, there is no serious dispute. However, the learned counsel for the appellant, by relying on the precedents of this Court as well as that of the Apex Court, argued that the third respondent cannot evade from their liability to make payment of compensation to the deceased for the sole reason that he was not having a valid driving licence at the time when the accident took place.

9. By relying on the dictum laid down by a Division Bench of this Court in United India Insurance Company Ltd v. Annakutty and Another [2005 (2)

KLJ 541], the learned counsel for the appellant argued that when the accident has resulted in the death of a workman, necessarily Clause (b)(ii) of the

Proviso to Section 3(1) of the Workmen's Compensation Act will have no application, and that wilful disobedience of an order or Rule expressly

framed for the purpose of securing such safety like insistence of a driving licence will have bearing going by the said provision, only in respect of any

injury not resulting in the death of the workman. Again, by referring to a Division Bench decision of this Court in Oriental Insurance Co. Ltd. v. Jimmy

and Another [2004 ACJ 900], the learned counsel for the appellant pointed out that when the accident is not disputed, the questions whether the

workman did have a proper licence or not, whether he is a wireman, a boiler operator or driver etc., are not a matter for the concern of the insurer. It

is further stated thereunder that when the insurer had undertaken the liability that had fallen upon the insured, it has to be necessarily discharged by

the insurance company. The learned counsel for the appellant further relied on the Constitution Bench decision of the Apex Court in Bajaj Alliance

General Insurance Co. Ltd. (M/s.) v. Rambha Devi [2024 KHC 6607] to substantiate his point that a person holding a LMV licence is equally

competent to drive a transport vehicle, provided the vehicle's gross weight does not exceed 7500 Kgs. It is further pointed out by the learned

counsel for the appellant by relying on the above decision of the Apex Court that the reference to "transport vehicle" in Section 3(1) and other

sections of the Motor Vehicles Act and Rules has to be understood as applying to only those vehicles which fall beyond the scope of the definition

under Section 2(21) of the MV Act. Thus, by relying on Ext.A5 copy of the driving licence of the deceased authorising him to drive light motor

vehicle, it is pointed out by the learned counsel for the appellant that the absence of a separate driving licence to drive autorickshaw cannot be taken

as a violation of the conditions of the insurance policy covering the vehicle involved in the accident in the instant case.

10. The learned Standing Counsel for the 3rd respondent argued that the proposition of law canvassed by the learned counsel for the appellant in the

above regard has got applicability only in a case where the accident has resulted in the death of a third party, and not the driver of the vehicle. It is not

possible to accept the above argument since the decisions rendered by the Division Bench of this Court in United India Insurance Co. Ltd (supra) and

Oriental Insurance Co. Ltd (supra) are in respect of the death caused by an accident to the driver of the vehicle for which the insurer had issued the

policy. So also, the law laid down by the Apex Court in Bajaj Alliance General Insurance Co. Ltd. (M/s.) v. Rambha Devi that a person holding Light

Motor Vehicle licence is equally competent to drive a transport vehicle having gross weight not exceeding 7500 Kgs, is squarely applicable in the facts

and circumstances of this case.

11. In view of the settled position of law evolved from the aforesaid decisions of this Court and that of the Apex Court, the irresistible conclusion

which could be drawn is that the liability of the third respondent to make payment of the compensation ordered by the Court of Workmen's Compensation

Compensation Commissioner to the appellant herein cannot be abjured stating the reason that the deceased was not having a licence to drive

autorickshaw which was the vehicle that met with the accident in this case.

In the result, the appeal stands allowed as follows:

i) The finding of the learned Commissioner for Workmen's Compensation, Thiruvananthapuram that the third respondent (third opposite party in

WCC No.108/2006) is not liable to pay compensation, is hereby set aside.

ii) The compensation amount ordered by the Court of the Commissioner for Workmen's Compensation, as per the order dated 02.07.2009 in

WCC No.108/2006, is directed to be paid at the instance of the third respondent, to the appellant herein within a period of thirty days from today.

iii) The order under challenge in this appeal, stands modified to the above extent.