

(2012) 02 KL CK 0160

High Court Of Kerala

Case No: M.F.A. No. 197 of 2010

New India Assurance Company
Ltd.

APPELLANT

Vs

K. Venu and Others

RESPONDENT

Date of Decision: Feb. 17, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149(2)

Citation: (2013) 1 ACC 223 : (2013) ACJ 687 : (2012) 133 FLR 515 : (2012) 1 KLJ 794 : (2012) 3 LLJ 816 : (2012) 2 TAC 731

Hon'ble Judges: T.B. Radhakrishnan, J; C.T. Ravikumar, J

Bench: Division Bench

Advocate: Rajan P. Kaliyath, for the Appellant; Nagaraj Narayanan, R.T. Pradeep and V. Vijulal, for the Respondent

Final Decision: Dismissed

Judgement

Thottathil B. Radhakrishnan, J.

This appeal is against an award passed under the Workmen's Compensation Act, 1923, for short, the "Act". The insurer is the appellant.

Vehicle bearing No. KL-01 G 4271, which is a Bajaj pick-up auto, collided with a mini lorry and the person who was driving the pick-up auto died while being carried to the Medical College Hospital, Trivandrum. His legal representatives filed a claim under the Act.

The insurer contested fundamentally on two grounds. The first contention was that there is breach of the policy condition inasmuch as the deceased driver possessed a licence only to drive a passenger vehicle, i.e., to say, a vehicle other than a goods vehicle and the vehicle that met with the accident was a goods vehicle. The second contention was that the policy was granted only regarding a passenger vehicle, i.e., to say, Bajaj autorikshaw and not for a goods pick-up auto.

2. Appreciating the evidence, the Commissioner repelled the plea that the insurance was given only for a passenger vehicle. The Commissioner relied on the copy of the policy which was available along with the police papers. That showed that the policy initially issued as regards the Bajaj autorikshaw was corrected as one issued for Bajaj pick-up auto. That correction was under the signature and seal on behalf of the insurer. Not only that, there is no dispute between the parties that the registration number of the vehicle is KL-01 G 4271. By now, there is no dispute that it is a goods vehicle. We are not inclined to take that the officers of the insurer would not have inspected the vehicle before giving insurance policy. Obviously therefore, the entry in the policy as initially issued, to the effect that the vehicle is an autorikshaw, is erroneous and would obviously have been the reason for the subsequent rectification. We say this, in particular, because there is no plea for the insurer that there was an illegal conversion of the user of the vehicle. With all this, we do not find any substance in the insurer being aggrieved by that finding. We also note that there is no specific attack in the appeal memorandum raising any substantial question of law on that issue.

3. Now, the question is whether the deceased-driver who possessed only a licence to drive a vehicle other than a transport vehicle could have driven the vehicle in question and whether the entrustment of the vehicle to such a person would result in violation of the policy conditions. Learned Counsel for the insurer, relying on the decision of the Apex Court in *National Insurance Company Ltd. v. Mastan*, 2006 KHC 130 = 2006 (1) KLT 853 = 2006 (2) SCC 641 = AIR 2006 SC 577 argued that the insurer is entitled to raise the defence available u/s 149(2) of the Motor Vehicles Act, 1988 in opposition to a claim under the Workmen's Compensation Act. We, for the purpose of deciding the case in hand, do not see that it is necessary to go into that issue. The three-Judge Bench of the Apex Court in *National Insurance Company Ltd. v. Swaran Singh*, 2004 KHC 314 = 2004 (3) SCC 297 = 2004 (1) KLT 781 = AIR 2004 SC 1531 considered, inter alia, the question as to what would be the legal effect when the person has been granted licence for one type of vehicle but, at the relevant time, he was driving another type of vehicle. The discussion in this regard is contained in paragraphs 88 to 91 of that report in SCC. Pithily, the ratio emanating from that discussion is as follows:

In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

4. Therefore, in each case, the Commissioner has to decide on the issue as to whether the incident is the result of any act or omission attributable to the driver in question, whose licence is under challenge. If the accident is out of circumstances which have no nexus with the driver not possessing the requisite type of licence, the insurer cannot escape the liability. The scope of such adjudication would arise only when there is a plea by the insurer that it was because of the default, neglect or negligence of the driver (workman in question) that the accident occurred. We have searched the entire written statement and additional written statement of the insurer. We see not a syllable of accusation against the deceased who was driving the vehicle in question, charging him with neglect or negligence in driving. In this view of the matter, we find no ground on which the insurer could have escaped the liability. We are, therefore, not persuaded to accept the argument on behalf of the insurer that the matter may be remitted for adjudication, at least on the eligibility of the insurer to be indemnified by the insured on satisfaction of the award. For the aforesaid reasons, the appeal fails. The same is accordingly dismissed. No costs. The Commissioner is directed to release amounts lying in deposit to the claimants on production of copy of this judgment.

Before parting, we think it appropriate to further direct that the office of the Commissioner for Workmen's Compensation, from where lower Court records are called for in connection with appeals to this Court, shall prepare proper index of the LCRs when files are sent up. We issue this direction in the light of the fact that it is extremely inconvenient to handle the LCRs otherwise. The Registry will communicate this part of the order to all Commissioners for Workmen's Compensation in the State of Kerala for strict adherence, unless otherwise ordered by this Court.