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Court : Kerala

Decided On : Jun-11-2012

Judge : Pius C. Kuriakose &Amp; a.V. Ramakrishna Pillai

Appeal No. : MACA.No.2187 of 2007

Appellant : A. Panner Selvam and Others

Respondent : P.J. Jacob and Others

Judgement :

1. The claimants are in appeal.

2. The appellants are the aged parents and minor sister of one Joseph Madhavan, a 21-year-old helper, who met with his death on 04.04.2000 under a concrete pillar, which was hit down by an excavator belonging to the contractor (1st respondent) under whom he was working. Allegedly, the accident was due to the negligent operation of the excavator by the 2nd respondent, who was the driver. The 3rd respondent/Insurance Company was the insurer of the vehicle.

3. Against the claim of Rs.5,30,000/- the learned Tribunal awarded a sum of Rs.2,48,670/- as compensation attributing negligence against the 2nd respondent. However, the Insurance company was exonerated from paying the compensation on the ground that the deceased did not fall within the definition of ‘third party’ to get the insurance coverage under Ext.B1, which was an ‘act only’ policy. In this appeal, the appellants are challenging the adequacy of compensation as well as

the finding exonerating the 3rd respondent/Insurance Company from the liability of paying compensation.

4. We have heard the learned counsel for the appellants and the learned Standing Counsel for the 3rd respondent/Insurance Company. The impugned award was also perused.

5. The accident is not disputed. The learned Tribunal, for valid reasons has found that the accident had occurred in a public place. The said finding is not assailed by the respondent. The learned Tribunal exonerated the 3rd respondent/Insurance Company finding that the deceased was an employee of the 1st respondent, who is a contractor. The excavator involved in the accident belonged to the 1st respondent at the relevant time. The learned Tribunal found that the deceased being an employee of the 1st respondent, was not a third party and was not covered by the policy issued by the 3rd respondent/Insurance Company, which was an 'act only' policy. The crucial question which we are called upon to answer is whether the deceased was a third party or not.

6. The learned Standing Counsel for the 3rd respondent/Insurance Company would invite our attention to a decision of this Court in Rajan v. Pravith (2009 (3) KLT 939), where it was held that a person working as a cleaner in a bus cannot file a claim petition as a third party under Section 147 and the insurer cannot be held liable when no additional premium was paid for cleaner. The learned counsel for the 3rd respondent/Insurance Company would submit that the deceased, being an employee under the 1st respondent, who is the registered owner of the offending vehicle, will not get the benefit under Ext.B1 policy as he was a third party. If at all any compensation can be claimed, it can be only under the Workmen's compensation Act; so submitted the learned counsel for the 3rd respondent. To appreciate the argument, we have gone through the decision referred to above. In that case, the claimant was travelling in a bus as cleaner and enroute one of the tyres burst and the claimant was asked to replace the tyre. While he was putting the jacky near the rear wheel of the vehicle, the driver moved the vehicle as a result of which the jacky turned down and the claimant was injured. A claim petition was filed against the owner and insurer of the vehicle. The insurer

contended that they were not liable to indemnify the owner. The learned Tribunal directed that the owner is liable to satisfy the award and exonerated the insurer on the ground that no premium has been paid for cleaner as per the statute. Following the decision of the Apex Court in New India Assurance Co. Ltd. V. Asha Rani and Others (2003 (1) KLT 165 (SC)), this Court found that the cleaner was engaged in doing something which was closely related to his employment. It was held that for the reason that the accident took place when he was in the job of replacing the tyre, he cannot get the status of a third party.

7. In the aforesaid case, the claimant was performing an act which was intrinsically connected with his employment. It is true that the deceased in this case was working under the 1st respondent, who was a contractor. He was standing at the work site at the material time. The accident occurred while the 2nd respondent was operating the excavator to demolish a building during the process of which one of the concrete pillars fell on the deceased. The deceased was neither travelling by the excavator nor doing any act as an employee associated with the vehicle. At the material time, he was not performing any act intrinsically connected to his employment. Though the deceased was employed by the 1st respondent, who is a contractor, his employment was not in relation to the vehicle involved in the accident. The status of the deceased cannot be equated to that of the cleaner of a vehicle like the claimant in Rajan v. Pravith (2009 (3) KLT 939). We have no hesitation to hold that the deceased was a third party and accordingly, the 3rd respondent/Insurance Company is liable to indemnify the 1st respondent, who is the owner of the excavator, under Ext.B1 policy. Hence, we interfere with the finding of the learned Tribunal exonerating the 3rd respondent/Insurance Company from making the payment of compensation and modify the same as above.

8. Now, we will come to the question of compensation that has to be awarded to the appellants. The deceased was only 21 years at the time of the accident. His father, the 1st appellant was aged 50 years and his mother, the 2nd appellant, was aged 40 years and the 3rd appellant who is his sister was aged only 15 years at the relevant time. The accident was in the year 2000. It is only reasonable to presume that the deceased might have been earning at least Rs.2,500/- per month under the 1st respondent. As the deceased was unmarried, we lean ourselves to

the multiplier applicable to the age group of the mother who is younger among the parents. The correct multiplier applicable to her age group as per the decision of the apex court in Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)) is 15. As the deceased was unmarried, one half of the income has to be deducted in consideration of the expenses, which the deceased would have incurred had he been alive. When the dependency compensation is recalculated as above, the compensation will get enhanced to Rs.2,25,000/-. As the learned Tribunal awarded only a sum of Rs.2,18,670/- under that head, we award to the appellants an additional sum of Rs.6,330/- towards compensation for loss of dependency.

9. Going through the impugned award, we notice that just and reasonable compensation has been awarded by the learned Tribunal towards funeral expenses, loss of estate and pain and suffering. As no separate sum has been awarded by the learned Tribunal towards transportation expenses, we award to the appellants a sum of Rs.1,000/- under that head.

10. As the deceased was the only son of appellants 1 and 2, they are entitled to get a reasonable sum as compensation for loss of love and affection. As the amount awarded by the learned Tribunal is only Rs.5,000/-, we award to the appellants an additional sum of Rs.15,000/- towards loss of love and affection.

11. Thus, in total, the appellants become entitled to get a sum of Rs.22,330/- (Rupees twenty two thousand three hundred and thirty only) over and above what has been awarded by the learned Tribunal, which will carry interest at the same rate specified in the award. The 3rd respondent shall pay the entire amount of compensation.

The appeal is allowed and the award shall stand modified as above.

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