HIGH COURT OF KERALA

BENCH : THE HONOURABLE MR. JUSTICE G. GIRISH

DATE OF DECISION: 9TH APRIL 2024

MFA (ECC) NO. 169 OF 2010

APPELLANT:

THE ORIENTAL INSURANCE CO.LTD.

VS

RESPONDENTS:

RADHAKRISHNAN, S/O.KRISHNAN NAIR

C.K.MANOHARAN (DECEASED)

P.UNNIKRISHNAN NAIR

ADDL.R4 MRS.VASANTHI

ADDL.R5 MISS.SHIJI

Legislation and Rules:

Workmen’s Compensation Act, 1923 - Section 30

Motor Vehicles Act, 1988 - Section 157

Subject:

Appeal under Section 30 of the Workmen’s Compensation Act, 1923 against the order of the Commissioner for Workmen’s Compensation, awarding compensation for injuries sustained by a bus conductor in a scooter accident while seeking medical aid for a condition experienced during employment.

Headnotes:

Workmen's Compensation - Appeal against order of Commissioner for Workmen’s Compensation awarding compensation to claimant - Claimant, a bus conductor, suffered chest pain during employment, sought medical attention, and met with an accident on the way to the hospital - Claim for compensation filed - Insurance company, appellant, challenges liability to indemnify subsequent owner of the bus and the claimant's entitlement to compensation - Argument that accident occurred beyond the scope of employment rejected - Principles of notional extension of employment applied - Accident deemed to have occurred during the course of employment - Liability of insurance company upheld - Appeal dismissed. [Paras 1-7]

Referred Cases:

- Mallamma (Dead) by L.rs. v. National Insurance Co. Ltd. and Others [(2014) 14 SCC 137]
- General Manager, B.E.S.T Undertaking, Bombay v. Mrs.Agnes [AIR 1964 SC 193]
- Manju Sankar & Ors. v. Mabish Miah & Ors. [(2014) 14 SCC 21]
- Leela Bai & Anr. v. Seema Chouhan & Anr. [(2019) 4 SCC 325]

Representing Advocates:

For Appellant: Sri.Mathews Jacob (Sr.), P.Jacob Mathew

For Respondents: P.Vijaya Bhanu (Sr.), T.C.Suresh Menon, V.A.Johnson (Varikkappallil)

J U D G M E N T

The 2nd Opposite Party in W.C.C.No.68 of 2009 of the court of the Commissioner for Workmen’s Compensation (Deputy Labour Commissioner), Thrissur, has filed this appeal under Section 30 of the

Workmen's Compensation Act, 1923 challenging the order dated 04.05.2010 of the said authority awarding a compensation of Rs.1,13,736/- with interest and costs to the applicant (claimant) therein.

2. The 1st respondent in this appeal (applicant in WCC No.68 of 2009), who was a Conductor in the bus which belonged to the 2nd respondent, suffered chest pain at 4.30 p.m on 09.10.2000 during the course of his employment. He took a Scooter and proceeded to consult a Doctor at Medical College Hospital. During the course of the above journey, he met with an accident and suffered multiple injuries. He claimed compensation before the Court of the Commissioner for Workmen's Compensation in respect of the above injuries sustained in the said accident. The learned Commissioner for Workmen's Compensation, after evaluation of the evidence adduced by the claimant through the oral testimonies of AW1 and AW2 and the documents marked as Exts.A1 to A5, and the oral testimony of MW1 and the documents marked as Exts.M1 and M2 and the medical report marked as Ext.X1, held that the claimant was entitled for an amount of Rs.1,13,736/- as compensation. The above amount was ordered to be paid with interest @ 12% per annum. It is aggrieved by the above order of the Commissioner for Workmen's Compensation that the present appeal has been preferred by the Insurance Company which was the 2nd opposite party in the aforesaid W.C.C.

3. The 2nd respondent in this appeal who was the earlier owner of the bus where the 1st respondent had been working, died during the pendency of this appeal. The additional respondents 4 and 5 were impleaded as the legal representatives of the deceased 2nd respondent. The respondents were represented through their respective counsel.

4. Heard both sides.

5. The substantial question of law raised by the appellant is the liability of the insurance company to indemnify a subsequent owner of the bus, and also the entitlement of the 1st respondent to have compensation for the injury sustained in an accident while outside the bus where he had been working.

6. Admittedly, the 2nd respondent was the owner of the bus at the time of appointment of the 1st respondent as Conductor in that bus. The abovesaid bus is said to have been transferred to the 3rd respondent who was the owner of the bus at the time of accident. The strange argument advanced

by the appellant Insurance Company is that they are bound to indemnify only the 3rd respondent who is the present owner of the bus, and that the 1st respondent cannot claim any amount as compensation since the employeremployee relationship was between the 2nd respondent and the 1st respondent. There is absolutely no basis for the above argument advanced by the appellant in the light of the principles contained in Section 12 of the Workmen's Compensation Act, 1923 and Section 157 of the Motor Vehicles Act, 1988. The Apex Court has held in **Mallamma (Dead) by L.rs. v. National Insurance Co. Ltd. and Others [(2014) 14 SCC 137]** that the deeming provision under Section 157 of the Motor Vehicles Act would be applicable to a claim under Workmen's Compensation Act as well. It has been further observed in the aforesaid decision that once the ownership of the vehicle is admittedly proved to have been transferred, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner, and the policy will not lapse even if the intimation as required under Section 103 of the MV Act, is not given to the insurer. Therefore, the question of law in the above regard is already settled, and hence the appellant cannot succeed in the challenge raised against the impugned order of the Commissioner for Workmen's Compensation, upon the above ground.

7. Another argument advanced by the learned counsel for the appellant is that the 1st respondent cannot be said to have sustained injuries in an accident occurred while discharging his duty as a Conductor in the bus belonging to the 3rd respondent. According to the appellant, the accident occurred while the 1st respondent was riding a scooter, which was beyond the scope of notional extension of employment. Here also, it is not possible to accept the argument advanced by the learned counsel for the appellant. The impugned order would reveal that the said authority has rightly appreciated the evidence tendered by the 1st respondent that he had to step out of the bus on 09.10.2000 during the course of employment and to proceed to the hospital in a scooter since he felt chest pain while working in that bus. The 1st respondent is also seen to have tendered statement before the Commissioner that the accident occurred since a cycle rider jumped in front of his scooter while he was on the way to hospital, after alighting from the bus, where he was working. Evaluating the above evidence, the learned Commissioner for Workmen's Compensation has rightly observed in the impugned order that the accident occurred and the 1st respondent sustained injuries while discharging his duty as a Conductor in the vehicle with

Registration No.KL8 D/7299. There is absolutely no illegality or impropriety in the above finding of the Commissioner. The principle of notional extension of employment would clearly bring the accident suffered by the 1st respondent on 09.10.2000 as one happened during the course of his employment in the bus belonging to the 3rd respondent. If an employee gets indisposed during the course of his work at the establishment of his employer, and proceeds to the hospital for medical aid, the above transit from the place of employment to the hospital and vice versa, would clearly come within the purview of the course of employment. Therefore, the challenge raised by the appellant in this regard is devoid of merit. The principle of notional extension of employment has been applied by the Apex Court in the celebrated decision in **General Manager, B.E.S.T Undertaking, Bombay v. Mrs.Agnes [AIR 1964 SC 193]**, wherein it has been held that there is a notional extension at both the entry and exit by time and space, and that the scope of such extension must necessarily depend on the circumstances of a given case. The principle of law in the above regard has been followed by the Apex Court in **Manju Sankar & Ors. v. Mabish Miah & Ors. [(2014) 14 SCC 21]** and **Leela Bai & Anr. v. Seema Chouhan & Anr. [(2019) 4 SCC 325]**. Applying the ratio laid down by the Apex Court in the aforesaid decisions to the case on hand, the accident suffered by the 1st respondent while travelling in a scooter to the hospital, seeking medical aid for the chest pain suffered during the course of his employment as Conductor in the bus belonging to the 3rd respondent, would clearly come within the purview of notional extension of employment. In that view of the matter, the challenge raised by the appellant against the impugned order of the Commissioner for Workmen's Compensation, is totally unsustainable.

In the result, the appeal is hereby dismissed.