Karnataka High Court Oriental Insurance Company ... vs Kashim And Anr. on 21 November, 1995 Equivalent citations: 1996 86 CompCas 106 Kar, 1996 (73) FLR 1596, (1996) IILLJ 172 Kant Author: S Venkataraman Bench: S Venkataraman JUDGMENT S. Venkataraman, J. 1. Though this matter has come up for orders, as both sides are represented and point involved is a short point, it is heard on merits." 2. The first-respondent sought for compensation before the Commissioner for Workmen's Compensation for the injuries sustained by him in an accident which took place on 18-11-1990. He was travelling in the truck bearing No. CTW 6776 in his capacity as driver employed by the second-respondent who is the owner of the vehicle. His case was that on that day at the time of the accident another driver by name Khasim Sab was driving the vehicle and that he was taking rest, that there were two drivers for the vehicle and that there was a collision between their vehicle and another truck which came from the opposite direction. In that accident, he sustained injuries which has resulted in permanent disability. 3. The owner of the vehicle did not contest the claim. Only the insurer-appellant filed objections. On the material on record, the Commissioner has held that the first-respondent was employed by the owner of the truck as a driver and that at the time of the accident, the first-respondent was travelling in the truck as a spare driver and that he sustained the injuries in the accident arising out of and in the course of his employment. On the basis of the evidence of the first-respondent and the doctor's evidence, he has determined the loss of earning capacity at 100%. On that basis, the Commissioner has awarded the compensation of Rs. 1,08,455/- and has made appellant-insurer liable to pay that compensation. 4. The main contention urged by the learned Counsel for the appellant is that under Section 147 of the Motor Vehicles Act, 1988, there is a statutory liability to cover risk of only the employee engaged in driving the vehicle, that in the present case the insured had taken the policy to cover the risk of only one driver, that admittedly the first-respondent was not engaged in driving the vehicle at the time of the accident, that the policy does not cover the risk of the spare driver and hence the appellant cannot be made liable to pay the compensation. In support of this contention he has relied on the judgment of the Madhya Pradesh High Court in New India Assurance Company Limited v. Ashok Singh and Others. 1990 ACJ 1055 (M.P.) 5. The Commissioner on the basis of the evidence adduced by the first-respondent as well as taking into consideration the fact that the owner of the vehicle did not dispute the fact that the first-respondent was employed by him as a driver, has held that the first-respondent was employed by the second-respondent as a driver. The driving licence had also been produced by the first-respondent. It is no doubt true that at the time of the accident, the first-respondent was not engaged in driving the vehicle. But it is seen from the deposition of the first-respondent that in the cross-examination by the appellant, a specific suggestion is put to him that actually he was driving the vehicle and that there was no need for two drivers. The first-respondent has no doubt denied that suggestion. As such the fact that the first-respondent was an employee of the second-respondent as a driver cannot be seriously doubted. The question is whether the insurer would not be liable to pay the compensation, as the

first-respondent was not actually driving the vehicle at the time of the accident and someone else was driving it. 6. In Ashok Singh's case relied on by the learned Counsel for the appellant, the facts were that the regular driver of the vehicle alleged that he had taken another person as a helper on the assurance that he would be paid by the owner. The owner did not depose that he had authorised the driver to take any helper or that he undertook to remunerate any such helper. It is on those facts, the Court held that the policy does not cover any risk other than created by the statute. It was held that as the injured was not lawfully travelling and in the absence of any contract to the contrary, it cannot be held that he is a person whose risk was statutorily covered. In the present case, the fact that the first-respondent was an employee of the second-respondent was not disputed and the Commissioner has recorded the finding to the effect. 7. Even if it could be said that under Section 147, the policy is required to cover the employee engaged in driving the vehicle and that as the first-respondent was not actually driving the vehicle at the time of the accident and as the policy did not cover the risk of two drivers, the coverage given to the driver under the policy does not come into operation, it cannot be straightaway said that the insurer is absolved of all liability to pay compensation. The vehicle involved in the accident is a goods vehicle. Rule 100 of the Motor Vehicle Rules, 1989, provides that a total number of six employees apart from the driver can be carried in a goods vehicle. Sub-clause (c) of clause (i) of the proviso to Section 147(1) requires statutory cover for the employee carried in the vehicle if it is a goods vehicle. As such, in the case of a goods vehicle, there is statutory cover in respect of six employees carried in the vehicle. Even if the first-respondent was not actually driving the vehicle at the time of the accident, he was travelling in the vehicle at the time of the accident in his capacity as an employee of the owner of the vehicle. He was also travelling in the course of his employment. As such the insurer would be liable to pay the compensation payable under the Workmen's Compensation Act. Hence on the facts of the case the order of the Commissioner making the insurer liable for the compensation payable does not suffer from any legal infirmity. 8. The appellant has also contended that though the doctor had estimated the permanent disability at 50%, the Commissioner had assessed the loss of earning capacity at 100% and that this was not proper. The evidence of the doctor shows that on account of the injuries, the first-respondent cannot now fold his right leg, that even there is no proper movements of the ankle joint and that even if treatment is given, those disabilities would not go and that in his present condition he would not be able to drive a heavy vehicle. As such though the permanent disability has been assessed at 50% taking into consideration the facts that the first-respondent was driving a heavy goods vehicle and that now he cannot drive that vehicle and thereby he has lost his avocation, the Commissioner has fixed the loss of the earning capacity at 100%. This Court has held in several cases that where a driver is rendered unfit to drive the vehicle, the loss of earning capacity can be fixed at 100% even though the permanent physical disability is not that much. In the circumstances there are no good ground to interfere with the order of the Commissioner. 9. For the above reasons, this appeal is dismissed. The amount

deposited by the appellant may be transferred to the Commissioner for payment to the claimant.