
(1990) 03 KL CK 0021
In the High Court Of Kerala
Case No : M.F.A. No. 762 of 1989

Benny

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-03-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1990) 2 ACC 305 : (1991) ACJ 182

Hon'ble Judges : L. Manoharan, J;K.T. Thomas, J

Bench : Division Bench

Advocate : S. Sankarasubban and R. Sreedharan Nair, for the Appellant; Siby Mathew, A.A. Mohammed Nazir, Kurian Joseph and V.K. Mohanan, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The appellant is the owner of a vehicle (Trekker) in which passengers are carried for hire and reward. The said vehicle met with an accident on 5.5.1985 around 9 a.m. In the accident a pedestrian was knocked down. He sustained injuries and later died due to the said injuries. His widow and children made a claim against the appellant and the driver of the vehicle as well as the insurer for compensation in respect of the death of the deceased. Claims Tribunal awarded a total sum of Rs. 1,10,000/- as compensation. However, the Claims Tribunal limited the liability of the insurance company to Rs. 50,000/-. Interest at the rate of 12 per cent per annum was allowed from the date of the claim petition. This appeal is hence filed by the owner of the vehicle in challenge of the quantum of compensation fixed as well as the limit of insurer's liability.

2. There is no dispute that the accident happened involving the Trekker KEE 8339. There is no dispute that the appellant was the owner of the vehicle on the date of accident. There is no dispute that the vehicle at the time of accident was covered by a policy of insurance with the 5th respondent, insurance company. There is also no dispute that the deceased died due to the injuries sustained as a

consequence of the accident.

3. But there is dispute regarding the age of deceased. Claims Tribunal found that the deceased was aged 36. Learned counsel for appellant referred us to Exh. A-4, postmortem certificate in which the doctor who conducted the autopsy on the dead body of the deceased has mentioned that the age of the deceased was 45. It is not known as to how the doctor would have fixed the age of the deceased at 45. The claimants have mentioned the age of the deceased in the claim petition as 36. None of the contesting parties had disputed the same. That apart, the widow of the deceased when examined as PW 1 has deposed that the age of her deceased husband was 36 at the time of death and the said evidence remains unchallenged. The age of PW 1 was 30 when she was examined before the Claims Tribunal on 9.3.1989. This fact lends further credence to her testimony regarding the age of her deceased husband. We, therefore, agree with the Claims Tribunal in finding the age of the deceased as 36 on the date of the accident.

4. The deceased was a mason whose monthly income was found to be Rs. 800/-. There cannot be any possible contention that the fixation of the income at the said rate is in any way excessive. If at all there is any error it is only on account of undue moderation. The Claims Tribunal has given concession of a further sum of Rs. 300/- from the said income as a possible share of consumption by the deceased himself. The multiplier fixed by the Claims Tribunal was 16, which in our view is also a moderate rate. There is no dispute regarding the award of compensation in respect of other counts. We, therefore, conclude that the Claims Tribunal has not awarded anything in excess of what the claimants are entitled to.

5. The limit of the insurer's liability is based on Exh. B-1 which is a certified true copy of the insurance policy. It contains clauses regarding the limits of liability.

(i) Limit of the amount of the company's liability u/s II-I (i)/Section II-I(a).

(ii) Limit of the amount of the company's liability u/s II-I(ii)/Section II-I(b).

In respect of any of the claims or series of claims arising out of any one event such amount as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939.

Learned counsel for the appellant, by reference to the first two limit clauses in the policy, raised a contention that since the insurance company has not produced the entire policy the court is not in a position to gauge the proper scope of those limit clauses. We fail to appreciate the said contention as it comes from the owner of the vehicle who wants to fasten the insurance company with the entire liability. It is also a statutory obligation of the owner of the vehicle to produce the insurance policy if the vehicle is covered by any such policy. Having failed to produce the insurance policy, the owner cannot be heard to contend that the insurance company has produced only a truncated policy.

6. Learned counsel then contended that even assuming that the policy of

insurance was limited in the manner provided in Section 95(2)(b) such limitation is not applicable to a case like this where the person who sustained injury was a pedestrian. According to the learned counsel the category mentioned in Section 95(2)(b)(i) does not take in non-passengers. Counsel contends that the words "persons other than passengers carried for hire or reward" in Sub-clause (i) of clause (b) should be understood as "passengers carried without hire or reward". When so understood, according to the counsel, it could be found that no limit is fixed by the provisions in respect of those injured persons who were not passengers in the vehicle. We are not impressed by the said contention at all.

7. It is to be noted that the category mentioned in Sub-clause (b) (ii) takes in all passengers. The categories of persons mentioned in Sub-clause (i) and Sub-clause (ii) of clause (b) cannot be read in isolation from the type of vehicle described in the clause. Categorisation of persons is made with reference to the vehicle. Clause (b) describes the vehicle thus:

Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment.

Legislature would have considered only two categories of persons affected by an accident involving such a vehicle: (1) passengers; and (2) non-passengers. It is the latter category which is envisaged in Sub-clause (i) of clause (b). Among passengers there can be persons who were not carried for hire or reward for whom provision is made in Sub-section (1). Hence the use of the words "carried for hire or reward" in Sub-clause (i) of clause (b) of Sub-section (2) are not capable of excluding all non-passengers from the scope of Section 95(2)(b)(i). Nor can those words be read in isolation from the main body of the Sub-clause for the purpose of contemplating a new category of persons who are passengers not carried for hire or reward.

8. The view which we take is fully supported by the reasoning adopted by a Division Bench of this court in the judgment in *Christian Welfare Centre and Another Vs. Sebastian and Others*, . We also find support to the said interpretation from another decision of a Division Bench of this court in *Vellunni v. Vellakutty* 1989 (2) KLT 229.

9. We, therefore, hold that the limit of insurer's liability in this case is upto Rs. 50,000/-. As such, there is no reason to differ from the directions given by the Claims Tribunal regarding the insurer's liability.

10. Learned counsel for the appellant lastly contended that the rate of interest granted by the Claims Tribunal is excessive. He brought our attention to the rates of interest granted by scheduled banks on fixed deposits. There is no dispute that 10 per cent is the rate for fixed deposits in scheduled banks. But that is not the only factor relevant for fixing the rate of interest in these cases. The question as to what should be the reasonable rate of interest awardable by Claims Tribunals was discussed in *G. Padmanabhan Nair and Others Vs. G.M. Kerala State Road Transport Corporation and Another*, . It was held that 12 per cent is the

reasonable rate. Hence we are not inclined to interfere with the rate of interest fixed by the Claims Tribunal.

11. In the result we dismiss the appeal.