

(2016) 04 KAR CK 0080
In the Karnataka High Court
Case No : M.F.A. No. 30987 of 2013 (MV)

Branch Manager, The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kashibai

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A

Citation : (2016) AAC 2266 : (2016) 3 AirKarR 641 : (2016) 4 CivillJ 286 :
(2016) ILRKarnataka 2197

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. Sudarshan M, Advocate, for the Appellant; Sri. Bapugouda
Siddappa, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sujatha, J.—This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal, Bijapur in MVC No. 535/2012.

2. The facts in brief are:-

it transpires that on 11.12.2006, when the deceased Gurulingappa was travelling from Ranjol Village with his friend in a jeep bearing registration No. KA-09/M-4033 as an occupant of the Jeep, met with an accident with one Tractor near Srinivas Saradagi Cross within the limits of Gulbarga University Police Station, it is averred by the claimants that the deceased sustained fatal injuries due to the motor vehicle accident and consequently died in the District Hospital Gulbarga. Based on these facts, the claimants being the wife and children of the deceased filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988, (the "Act" for short), by adducing evidence of PW. 1, marking Exs. P 1 to P7 in support of their claim. The appellant - Insurance Company has contested the case by filing the written statement and adduced the evidence of RW. 1, marking Ex. R1.

3. The Tribunal after appreciation of the material evidence, passed the judgment and award impugned herein, fastening the liability on the appellant - Insurance Company to indemnify the owner. Being aggrieved, the appellant insurer is before this Court.

4. The Learned Counsel for the appellant-Insurance Company would contend that the deceased was travelling as an occupant of the private vehicle i.e., jeep bearing registration No. KA-09/M-4033, no additional premium was paid by the owner of the vehicle to cover the risk of the occupants/inmates. Ex.R1, the Insurance Policy reveals that the coverage was only to the third parties including the owner/driver and not to an occupant/inmates travelling in the private vehicle. The Tribunal misconstruing that the Insurance Policy covered the risk of the occupants/inmates as an additional premium of Rs. 100/- was collected from the owner, fastened the liability on the insurer, contrary to the terms and conditions of the Insurance Policy at Ex.R1. The Learned Counsel would contend that it is settled law that an occupants/inmates/gratuitous passengers of a private vehicle could not be construed as third parties. In support of his contention, the Learned Counsel placed reliance on the Division Bench judgment of this Court in the case of *The Branch Manager, The New India Assurance Co. Ltd. v. Mahadev Pandurang Patil and Another*, ILR 2012 KAR 1841.

5. Per contra, the Learned Counsel appearing for the claimants justifying the judgment and award passed by the Tribunal would contend that the appellant has collected Rs. 100/- towards additional P.A. (personal accident). Ex.R1 covered the risk of the third parties, travelling in the offending vehicle. The insurer cannot escape the liability to indemnify the owner taking the defence that the deceased was a gratuitous passenger of a private vehicle, not covered under the Insurance Policy. According to him even the occupants/gratuitous passengers, irrespective of the coverage under the policy are entitled to the compensation under Section 163-A of the Act. The Learned Counsel further contends that Section 163-A of the Act is a special provision enacted to safeguard the interest of the third parties moreover, it is the departure from the prolonged trial under Section 166 of the Act engrafted with the principle of no fault liability. The avowed object of enacting Section 163-A of the Act would be defeated, if the occupants/inmates/gratuitous passengers of a private vehicle are not construed as third parties and no liability fastened on the insurer unless an additional premium is paid to cover the risk of such passengers. It is further submitted, the claim petition was filed by the widow and children of the deceased deliberately under Section 163-A of the Act in which the claimants are not required to plead or establish that the death or disability was due to any negligence or default on the part of the owner or any other person. In support of his contention, the Learned Counsel has placed reliance on the following judgments of this Court:

1. *New India Assurance Co. Ltd. v. Sri G. Nagaraju*, MFA No. 2643 of 2010 (disposed of on 09.06.2010).

2. Ram Chandra And Another v. Shantaram And Others, ILR 2004 KAR 398.

6. Heard the rival submissions of the parties and perused the material on record.

7. The undisputed fact is that the claim is made under Section 163-A of the Act. It is contended by the claimants that the deceased was the victim of the accident. Consequently, the widow and children being the legal heirs of the victim are entitled to claim compensation as such. The Hon'ble Supreme Court in the case of Ningamma v. United India Insurance Co. Ltd., ACJ 2009-0-2020. while considering the matter under Section 163-A of the Act has considered the judgment of the Apex Court in the case of Deepal Girishbhai Soni v. United India Insurance Co. Ltd., (2004) 5 SCC 385. In para No. 42 of the Deepal Girishbhai Soni's case (supra), the Hon'ble Apex Court has contemplated as to who can be recognised as "any person" to be understood as the third party, which reads as under:

"42*. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column I which deals with fatal accidents makes the position further more clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle. This Court further observed in Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428, at page 428:

"18. In New India Assurance Co. Ltd. v. Asha Rani this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held: (SCC p. 235, para 26)" that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e., "a third party". Keeping in view the provisions of the Act 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

In other words, this Court clearly held that the apparently wide words "any

person" are qualified by the setting in which they occur and that "any person" is to be understood as a third party."

8. The moot question in the instant case would be applicability of Section 147 of the Act to the proceedings under Section 163-A of the Act Chapter XI of the Act deals with Insurance of Motor Vehicles against third party risks. Both Sections 147 and 163-A of the Act falls under Chapter XI of the Act. It is trite that Section 163-A of the Act has been inserted by Act No. 54 of 1994 and has come into effect from 14.11.1994. The statement of objects and reasons of the amending Act 54 of 1994 is published in the Government of India, Gazette II, Section 1, No. 71 dated 12.09.1994. These amendments have been made in view of the recommendation of Supreme Court in the case of M.K. Kunhimohammed v. P.A. Ahmed Kutty, 1987 ACJ 872. It is also pertinent to note that Section 147(1)(b)(i) came to be amended by Act No. 54 of 1994 whereby "injury to any person" was substituted by the words "injury to any person, including owner of the goods or his authorised representative carried in the vehicle."

9. Section 163-A of the Act reads thus:

"163-A. Special provisions as to payment of compensation on structured formula basis. -

(I) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. "

10. Section 147 (1) of the Act reads thus:

"147. Requirements of policies and limits of liability- (I) In order to comply with the requirements of the Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of

bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

11. Section 163-A of the Act is a special provision based on predetermined structured formula. The relevant factors are:

i. The owner of the motor vehicle or the authorised insurer shall be liable to pay;

ii. In the case of death or permanent disablement due to accident arising out of the use of motor vehicle;

iii. Compensation to be paid as indicated in the Second Schedule, to the legal heirs or the victim.

The liability of the authorised insurer depends on the requirements of policies and limits of liability" of the insurer, governed by Section 147 (1) of the Act.

12. Section 147 (1) of the Act provides that the insurer is liable against any liability, which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in public place.

13. The Division Bench of this Court in the case of Mahadev Pandurang Patil (supra) has held thus:

"15. Therefore, the passenger of a vehicle which is not meant for public service is not covered under this Section. The said passenger in the case of a two wheeler is the pillion rider and in the case of three wheeler and four wheeler the occupants of such vehicle who are not carried in the said vehicle for hire or reward. Therefore, the insurance policy taken in respect of a vehicle, in which they are travelling as such passengers are not treated as third parties and such an insurance do not cover the risk of such persons. The reason is Section 147 does not require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injuries suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. The occupants/passengers/inmates of a private vehicle do not fall within the definition of the word third party. Therefore, the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle, passengers in such private vehicle

or a pillion rider in the case of a two wheeler. Gratuitous passengers who are not carried for hire or reward in a vehicle other than a public service vehicle, cannot be construed as third parties."

14. The Apex Court in the case of *New India Assurance Co. Ltd. v. Asha Rani And Others*, (2003) 2 SCC 223. has held that in respect of cases under Section 147 of the Act, prior to its amendment in 1994, the insurer will not be liable for paying compensation to the owner of the goods or authorised representative carried in the vehicle. Considering the reasons and objects of the statutory liability of the Amendment Act of 1994 whereby the words "injury to any person including owner of the goods or his authorised representative carried in the vehicle" were inserted and held thus:

"9. In *Satpal* case the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle" The conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his

representative either dies or suffers bodily injury. The judgment of this Court in *Satpal* case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

15. The Apex Court in the case of *United India Insurance Co. Ltd. v. Tilak Singh And Others*, (2006) 4 SCC 404, has held thus:

"18. Thus, even under the 1939 Act the established legal position was that unless there was a specific coverage of the risk pertaining to a gratuitous passenger in the policy, the insurer was not liable. We find that clause (ii) of the proviso to Section 95(1) has been eliminated while drafting Section 147 of the 1988 Act. Under sub-section (1)(b) under the 1988 Act, compulsory policy of insurance required under the statute must now provide against any liability which may be incurred by the owner of the vehicle.

"in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

21. In our view, although the observations made in *Asha Rani* case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased *Rajinder Singh* who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

16. In the case of *Nagaraju* (supra) on which the Learned Counsel for the claimants has placed much emphasis related to a case where the Insurance Company did not dispute that the policy did not cover the risk of a pillion rider or that its liability was limited. It was a case, wherein the Insurance Company did not rely on the statutory defences available under the Act to avoid the liability. In that context, it was held that the pillion rider would become a third party and liability of the insurer cannot be exonerated. In the present case, the specific contention of the insurer is that the occupant/gratuitous passenger risk was not covered under the Insurance Policy. Given the circumstances, the judgment relied upon by the Learned Counsel for the claimants is not applicable to the facts of the present case.

17. Similarly, another judgment relied upon by the Learned Counsel for the claimants in the case of *Ramchandra* (supra), this Court has held that no judgment of the Apex Court holding that an insurer is not required under the new

Act to cover the risk of passengers in a passenger carrying vehicle was brought to the notice of the Hon'ble Court. This issue is no more res-integra in view of the judgment of the Apex Court in Tilak Singh's case (supra) and the Division Bench judgment of this Court in Mahadbv Pandurang Patil (supra).

18. The Division Bench of this Court in the case of Mahadev Pandurang Patil (supra) has categorically held that the passengers of a vehicle which is not meant for public service is not covered under Section 147 (1) of the Act i.e., occupants of three wheeler and four wheeler and pillion rider in the case two wheeler, who are not carried for hire and reward. In other words, the inmates/occupants/gratuitous passengers who are carried in a private vehicle are not construed as third parties.

19. In view of the judgments cited supra, it is trite law that the insurer is not legally obligated under Section 147 of the Act to indemnify the owner for an injury or death of the gratuitous passengers of a private vehicle, unless additional premium is paid to cover the risks of such occupants/inmates, as the Insurance Policy was an Act policy. GR.36 of Indian Motor Tariff provides for Personal Accident (PA) Cover under Motor Policy which provides compulsory" Personal Accident Cover of Owner-Driver. The PA collected under Ex.R1 in the present case is towards additional PA cover of owner-driver not to an occupant/inmate. The Insurance Policy at Ex.R1 is only an Act policy, which admittedly is covering the risk of the third parties.

20. The claim petition though filed under Section 163-A of the Act on "no fault liability" basis, the requirements of policy and the limits of the liability of the insurance company is governed under Section 147 of the Act which relates to third parties excluding gratuitous passengers/occupants/inmates of a private vehicle unless covered by a specific coverage policy. The same analogy applies to the "victim" under Section 163-A of the Act. In other words, nature of the policy and the policy conditions applies to the claim under Section 163-A of the Act in view of the explicit liability of the owner or the authorised insurer. It is hardly required to be stated that if the policy is comprehensive, there is no cavil regarding the coverage of the risk of the occupants/inmates/gratuitous passengers of a private vehicle. It is restricted only in the case of Statutory Policy covering the third party risks. Unless an additional premium is paid to widen the risk of the policy, the insurer is not liable to indemnify the owner as regards the gratuitous passengers other than the third parties of a private vehicle are concerned. The Tribunal mistook that the insurer of the said vehicle had collected additional premium of Rs. 100/- towards P.A. (personal accident) of an occupant/inmate of the private vehicle which is unjustifiable in view of OR. No. 36 of IMT (Indian Motor Tariff). Accordingly, the liability fastened by the Tribunal on the appellant-Insurance Company is set-aside. In all other respects, the judgment and award passed by the Tribunal remains undisturbed.

21. In the result, the appeal is allowed to the extent indicated above. The owner/respondent No. 4 herein shall satisfy the award.

22. The amount in deposit shall be transmitted to the jurisdictional Tribunal for disbursement.