

(2004) 06 KL CK 0028

In the High Court Of Kerala

Case No : M.F.A. No's. 1211 and 1235 of 1993

Jayakumar

APPELLANT

Vs

Rajamma

RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2005) 1 ACC 41 : (2005) ACJ 172 : (2004) 3 CivCC 331 : (2004) 2 KLT 904 : (2004) 3 RCR(Civil) 815

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup and B.S. Swathy Kumar, for the Appellant; G.S. Reghunath, R.S. Kalkura, M. Ramaswamy, Lal George and P.A. Anitha, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhaskaran, J.—Both these appeals are filed by the owner of a Mahindra Trekker KBT 1231. The claimants in the two petitions were travelling in the jeep and they sustained injuries in an accident which occurred on 27.6.1987. In the petitions filed by them, the Tribunal awarded an amount of Rs. 20,000/- to the claimant in O.P.(MV) 41 of 1988 and an amount of Rs. 18,000/- to the claimant in O.P.(MV) 61 of 1988. In these appeals by the owner of the vehicle, the only contention pressed at the time of arguments is with respect to the liability of the Insurance Company for payment of compensation. The Tribunal held that the Insurance Company is not liable. The Tribunal found that the claimants who are passengers were travelling for hire, though it was registered as a private vehicle.

2. In these appeals, the learned counsel for the appellant argued that the appellant had taken a comprehensive policy and therefore the Insurance Company was liable to pay the compensation as found by the Tribunal. He also relied on the decision of the Supreme Court reported in Jameskutty Jacob v. United India Insurance Co. Ltd. 2003 (3) KLT 607 and Amrit Lal Sood and

Another Vs. Smt. Kaushalya Devi Thapar and Others, .

3. The learned counsel for the Insurance Company on the other hand contended that the policy for vehicle stated that the policy does not cover use for hire or reward or for organised racing, pace-making etc. According to the learned counsel, when the policy specifically excludes coverage in respect of persons travelling for hire or reward, the Insurance Company is not liable to pay compensation if the compensation is claimed by such persons. He also argued that the additional premium paid as comprehensive premium does not cover insurance for such persons travelling for hire or reward.

4. In Jameskutty Jacob's case 2003 (3) KLT 607 the Supreme Court has held that if the vehicle does not carry passengers for hire or reward, then u/s 95(2) (c), the liability of the Insurance Company would be the amount of liability incurred. It was also found that in view of the fact that it has not been shown that the vehicle was a taxi, the case would be covered by Section 95(2)(c). According to the learned counsel for the appellant, since the jeep in question in these two appeals is not registered as a taxi, the liability of the Insurance Company must be unlimited. In Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , it is held that the terms of the contract can be wider than that prescribed by the Statute, if under the policy insurer agreed to indemnify the insured against all sums" which the insured shall become legally liable to pay "in respect of death of or bodily injury to any person. The words "any person" would include gratuitous passenger. A Full Bench of this Court in United India Insurance Co. Ltd. Vs. Bindu, has held that gratuitous passenger in a goods vehicle or private vehicle is not entitled to insurance coverage under the Motor Vehicles Act, 1939, if the policy is taken only to give compulsory coverage under the Statute. It is also held that Insurance Companies are free to cover all risks under the Statute. In such cases, like any other contract, parties to the insurance policy are bound by the terms of the contract, i.e., conditions in the insurance policy and Courts have to consider the terms of the policy to determine the liability of the insurer. The Full Bench relied on the decision of the Supreme Court in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, . The Full Bench also relied on a Constitution Bench decision of the Supreme Court in New India Insurance Co. Ltd. v. C.M. Jaya 2002 (1) KLT 596. In all these, emphasis is made on the terms of the contract between the insurer and the insured.

5. The Tribunal has discussed the evidence adduced by the claimants. According to the evidence of PW. 1, there were about 30-35 passengers in the jeep and passengers are liable to pay charges before they got down from the vehicle. The charge was Re.1/-. PW.2 also deposed that the accident occurred before she paid the charge. The version of the appellant is that the vehicle was not used for commercial purpose. The driver allowed the passengers to travel in the jeep without realising any charge. It is impossible to believe this story of the owner of the vehicle that the driver of the vehicle would allow the passengers to travel

freely in the vehicle without any reason. Therefore, the evidence of the claimants that they were travelling on payment of charges has to be accepted. If it is so, it is clearly in violation of the terms of the agreement and it is well settled that the parties are governed by the terms of the agreement except in cases where the terms go against the statutory provisions. Therefore the conclusion arrived at by the Tribunal cannot be said to be in any way wrong. The result is that the appeals fail and they are dismissed without any order as to costs.