

(2016) 04 KL CK 0055

In the High Court Of Kerala

Case No : M.A.C.A. No. 389 of 2005. (Against The Award In OPMV. 272 of 1998 of Mact Pala Dated 16-04-2004 Appellant/claimant In O.P.(M.V.) 272 of 1998 of M.A.C.T. Pala)

K.A. Unnikrishnan

APPELLANT

Vs

Vijayakumar. K.S. @ Biju

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 149(2)(b)

Citation : (2016) AAC 1953 : (2016) 2 AnWR 234 : (2016) 3 ILR Kerala 202 : (2016) 2 KerLJ 662 : (2016) 3 KHC 83 : (2016) 2 KLT 920

Hon'ble Judges : P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. T.K. Radhakrishnan and Smt. K.L. Sreedevi, Advocates, for the Appellant; Sri. E.M. Joseph, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Menon, J.—Claimant is the appellant before this Court. Grievance is mainly against the verdict passed by the Tribunal exonerating the insurance company from the liability, holding that the policy taken was not in the name of the owner of the vehicle but in the name of the previous owner and hence that there was no privity of contract to be mulcted with the liability towards the third party/claimant.

2. Sequence of events is as follows : The appellant herein was travelling as a passenger in the autorikshaw bearing No. KL5B 2463 and while so, when the autorikshaw reached the place of occurrence, allegedly because of the rash and negligent driving of the autorikshaw, it capsized causing serious injuries to the passenger, which led to the claim petition filed before the Tribunal. Though the second respondent was shown as the registered owner, it was subsequently brought out that the said respondent had already transferred ownership of the vehicle to another person, who hence was brought in as the additional 4th

respondent. But for the 3rd respondent Insurance Company all other respondents before the Tribunal chose to remain ex-parte. As mentioned already, according to the Insurance company, they were not liable to satisfy the claim, for want of proper policy in the name of the owner of the vehicle as on the date of the accident.

3. The evidence adduced before the Tribunal consists of Exts. A1 to A12 marked on the part of the claimant and Ext. B1 marked on the part of the respondent company. Nobody was examined on either side. Based on the available materials on record, the Tribunal held that the second respondent was the previous owner of the vehicle, who transferred the vehicle to the fourth respondent on 19.06.1996; as revealed from Ext. A12 RC particulars. As such, on the date of accident, i.e. on 03.06.1997, it was 4th respondent who was the owner of the vehicle, who is liable to pay the compensation. Ext B1 policy for the period from 07.01.1997 to 06.01.1998 stood in the name of the second respondent, though the ownership of the vehicle was transferred to the 4th respondent much earlier on 19.06.1996 as disclosed from Ext.A12. In the said circumstances, the Tribunal accepted the contention of the 3rd respondent Insurance Company that the policy was taken in the name of the second respondent by suppressing material fact; that the vehicle had already been transferred to the 4th respondent on 19.06.1996 and hence that it was hit by Section 149 (2) (b) of the Motor Vehicles Act to the effect that the policy was void. Placing reliance on the judgment rendered by a learned Single Judge of the High Court of Madhya Pradesh, reported in 1997 ACJ 1383 (Asok Kumar and another v. Mohan Lal Kehar and another, it was held that 3rd respondent insurer was not liable to indemnify the 4th respondent. Thereafter, compensation was awarded under different heads and the total compensation payable was fixed as Rs. 1,07,630/-; which was directed to be satisfied with interest @ 9% p.a. from 05.05.1998 till realisation, along with cost of Rs. 2,700/- to be satisfied by the driver and the additional 4th respondent/owner. This made the appellant/claimant to feel aggrieved and hence the appeal seeking to fix the liability upon the insurer as well, on the strength of Ext. B1 policy, which was in existence as on the date of the accident, though in the name of the second respondent/previous owner.

4. Heard both the sides.

5. The learned counsel for the respondent insurance company submits that the Award passed by the Tribunal is perfectly within the four walls of law, which requires no interference as no policy was issued in favour of the owner/additional 4th respondent. On the date of issuance of Ext. B1 policy for the period from 07.01.1997 to 06.01.1998, there was no insurable interest for the second respondent over the concerned autorikshaw and since the second respondent was in no way connected with the vehicle, no liability could be fixed upon the insurer based on Ext. B1 policy issued in the name of the second respondent. The learned counsel for the appellant submits that a learned Judge of Punjab and Haryana High Court at Chandigarh in Om Prakash and another v. Rajbiri and

others [1997 ACJ 547] has repelled similar contention raised by the Insurance Company and held that it was the "vehicle" which was being insured and "not the owner" of the vehicle and as such, since the vehicle was having valid insurance policy on the date of the accident, the question as to who was the actual owner on the said date was quite immaterial.

6. Under Section 103A of the Old Act (Motor Vehicles Act 1939), necessary application had to be filed before the insurer for transfer of the policy, on transfer of ownership over the vehicle and there was an option for the insurer to have it transferred or not. But under the New Act, i.e. the Motor Vehicles 1988, a specific provision was incorporated as Section 157, whereby transfer of policy is automatic, along with the transfer of ownership over the vehicle to the transferee. To that extent, there is no dispute. The question is whether, after the expiry of the term of the policy existing on the date of transfer, can the transferee take a policy still in the name of the previous owner and claim to get insurance coverage on the strength of such policy, in respect of the liability towards a "third party" is the point to be considered in this case. 7. Insurance policy of course is a contract between the insurer and the insured. In the case of a vehicle, the requirement to have a statutory policy is specified under Section 146 of the M.V. Act, which is reproduced below :

"146. Necessity for insurance against third party risk - (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter (Chapter XI).

The requirements of such statutory policy and extent of coverage are given under Section 147 of the Act. The grounds on which award can be sought to be repudiated are given under Section 149 (2) of the Act. On going through the above provisions, it is quite clear that by virtue of the contract entered into between the insured and owner of the vehicle, the liability of the owner towards "third party" is stipulated to be taken over by the insurer, to the extent as specified under the Statute/policy.

8. The very wording under Section 147 (1) (b) mandates that such policy shall insure the person or class of persons specified in the policy. Sub Section 3 of section 147 stipulates that the policy shall be of no effect, for the purpose of Chapter XI unless and until, a certificate of insurance in the prescribed form is issued in favour of the person by whom the policy is effected. Sub section 5 of Section 147, opening with "non-obstante clause" states about the liability of the insurer issuing the policy of insurance under section 147 to indemnify a person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

9. From the above, it is quite clear that the name of the insurer is very relevant, and the liability undertaken by the insurer is only that of the person named in

the policy who stands insured. Viewed in the above background and applying the undisputed facts in the given case, Ext. B1 policy stands in the name of the second respondent and not in the name of the addl. 4th respondent. It also remains a fact that ownership of the vehicle was transferred by the 2nd respondent to the additional 4th respondent on 19.06.1996, as disclosed form Ext. A12 R.C particulars. Since there was no need, necessity or occasion for the second respondent to have taken any policy in his name after 19.06.1996, Ext. B1 policy taken for the period from 07.01.1997 to 06.01.1998 could have been only at the instance of the additional 4th respondent. The question to be considered is, whether there is any "fraudulent act" on the part of the additional 4th respondent in taking the policy in the name of the second respondent and whether the Tribunal is justified in exonerating the insurance company.

10. When the matter came up for consideration before this Court 01.03.2016, we doubted whether the question of privity of contract would have any relevance in so far as third party liability/statutory liability is concerned, but for the relevance, if any, with regard to the "own damage claim". It was accordingly, that the matter was heard in detail. In so far as the third party coverage is concerned, there might not have any need or chance to have inspected the vehicle on seeking for issuance of policy. It would have been issued with reference to the particulars given in the earlier policy or on the basis of the contents of the application, if any. But nothing prevented the insurance company from verifying the factual particulars, particularly the Registration Certificate and the Insurer could have very well denied issuance of policy in the name of the second respondent, who was only the previous owner in view of the name and entry of the 4th respondent, as the owner of the vehicle in the concerned RC, which has not been done.

11. In so far as the "3rd party claim" is concerned, it appears that the insurer thought it not necessary to inspect the vehicle or verify the RC before issuance of the policy. Even otherwise, in what way would it have tilted the balance, had it been disclosed to the insurer that it was the addl. 4th respondent who was the actual owner and not the second respondent (as per the RC particulars), is not explained by insurer, as the outcome can only be the same. In place of the name of second respondent, it would have been shown as issued in the name of the addl. 4th respondent. The insurance company having accepted the premium to satisfy the third party liability in respect of the vehicle mentioned in the policy, this Court finds it fit and proper to fix the consequence of lapse also on the part of the Insurer in having issued the policy without verifying the factual particulars with reference to the R.C.

12. By virtue of the mandate of section 146, nobody shall or cause to permit or operate a motor vehicle on the road without obtaining a valid insurance policy to cover statutory risk and since this was satisfied by obtaining Ext. B1 policy, though in the name of the previous owner (the second respondent), there was no chance for the police or authorities of the motor vehicles department to have

detained the vehicle for want of policy. The purpose behind section 146 is to protect the interest of the "3rd party" and having made operation of the vehicle possible on the strength of Ext. B1 policy issued by the respondent Insurer, if it is now to be held that the Insurer is to be exonerated from the 3rd party liability, it will definitely result in miscarriage of justice, in so far as the 3rd parties are concerned. This definitely is not the Scheme for providing statutory insurance to preserve and protect the risk of third parties. No bad motive on the part of the 4th respondent owner or anybody else in taking policy in the name of the 2nd respondent is established. In what way the said respondent was benefited is also not substantiated; so as to make it a "fraudulent act" to be within the strict purview of Section 149 (2) (b) of the M.V. Act. Since the Insurer has chosen to issue Ext. B1 policy, without taking the pain to verify the RC particulars, but for issuing the same in the name of the second respondent for the period from 07.01.1997 to 06.01.1998 and since the said policy was valid on the date of the accident, this Court is of the firm view that the appellant/claimant/third party cannot be driven to the streets. We also find support from the ruling rendered by the Apex Court reported in G. Govindan v. New India Assurance Co. Ltd. and others [AIR 1999 SC 1398] referring to the relevant provisions of both the enactments i.e M.V Act 1939 and 1988, in this regard.

13. In the above facts and circumstance, we find that the liability has to be satisfied by the Insurance company. We set aside/modify the Award passed by the Tribunal to the extent as above. No interference is made with regard to the quantum or anything else. The respondent insurance company shall deposit the due amount at the earliest, at any rate, within one month. The amount, if any, obtained from respondents 1 and 2 before the Tribunal shall be eligible to be deducted from the said amount. It will be for the appellant to give an affidavit in this regard, executed before a notary, before causing disbursement of the due amount as aforesaid. We make it clear that the observation and finding made above are in relation to third party liability/statutory liability alone and not in respect of any "own damage claim".

14. Appeal stands allowed to the said extent.