(2000) 01 KL CK 0039

In the High Court Of Kerala

Case No : M.F.A. No''s. 833, 838, 847, 851 and 906 etc. etc. of 1992 and 566 of 1993 and cross-objections

National Insurance Co. Ltd., Alwaye — APPELLANT

Vs

Krishnankutty and Others, etc. — RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:
Motor Vehicles Act, 1939 — Section 110, 95(2)

Citation : (2001) ACJ 276 : AIR 2000 Ker 127 : (2000) 2 ILR (Ker) 197

Hon'ble Judges : P.A. Mohammed, J;G. Sivarajan, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant; C.J. Joy, Abraham Mathew, B. Suresh Kumar, V.V. Asoken and Jose Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Mohammed, J.—These appeals are from the common award passed by the M.A.C. Tribunal, Trivandrum dated 31-12-1990 in O. P. (M.V.) Nos. 1073/86, 869/86, 1081/86, 1082/86, 1068/86, 1077/86, 1071/86, 1080/86, 1076/86, 1074/86, 870/86, 1079/86, 868/86, 1075/86 and 1072/86 respectively. The common appellant in all these appeals is M/s. National Insurance Company Limited, Alwaye.

2. The above claim petitions u/s 110-A of the Motor Vehicles Act were filed by the claimants claiming compensation for the death or personal injuries, as the case may be, arising out of the accident which took place on 13-7-1986. The vehicle involved in the accident was a lorry bearing registration number KRF 2207 which was capsized into a ditch on the western side of the road at a place called ''Singili Edapalayam''. As a result of this accident loading workers travelling in the lorry sustained serious injuries. More than twenty workers sustained injuries and three died. The injured persons as also the legal heirs of the deceased filed petitions claiming compensation for the injuries or death, as the case may be. The Tribunal considered the claim petitions individually and passed

a common award awarding compensation in each case.

3. Appeal number and claim petition number, nature of claim, amount claimed and amount awarded are tabulated hereunder :

Appeal number & Claim petition No.

Nature of claim

Amount claimed

Amount awarded

MFA No. 833/92 OP (MV) 1073/86

Injury

30,000

5,100

MFA No 838/92 OP(MV)869/86

Death

1,50,000

1,15,000

MFA No. 847/92 OP (MV) 1081/86

Injuries

1,00,000

17,000

MFA No 850/92 OP(MV) 1082/86

Injuries

1,00,000

39,600

MFA No. 851/92 OP (MV) 1068/86

Injuries

30,000

16,750

MFA No 852/92 OP(MV) 1077/86

Injuries

60,000

40,000

MFA No. 853/92 OP (MV) 1071/86

Injuries

30,000

6,750

MFA No 868/92 OP(MV) 1080/86

Death

1,00,000

62,200

MFA No. 869/92 OP (MV) 1076/86

Injury

50,000

23,750

MFA No 894/92 OP(MV) 1074/86

Injuries

10,000

4,100

MFA No. 895/92 OP (MV) 870/86

Death

1,50,000

96,750

MFA No 896/92 OP(MV) 1079/86

Injuries

1,00,000

32,500

MFA No. 906/92 OP (MV) 868/86

Injuries

1,00,000

18,400

MFA No 922/92 OP(MV) 1075/86

Injuries

40,000

20,000

MFA No. 566/92

Injuries

30,000

4,100

Total award

Rs.

5,02,000

4. The Tribunal framed three common issues for decision in all these cases. Those issues were:

1. Whether the accident occurred due to the negligence of the driver of the lorry?

2. Whether the third respondent was liable to pay compensation?

3. What, if any, is the compensation payable and by whom?

On the first issue the Tribunal came to the conclusion that the accident occurred due to the negligence and rashness of the driver of the lorry KEF 2207. As there is no dispute with regard to this conclusion, it has become final and conclusive.

5. The Tribunal considered the second common issue and found that the permit was given to the vehicle to carry only six persons and that there were more than twenty persons travelling in the vehicle at the time of the accident. The Tribunal placed reliance on the decision of Andhra Pradesh High court in 1990 Ace CJ 539 (Kannekanti Varamma v. Puli Ramalootaiah) for the position that even though the goods vehicle used for the purpose for which permit was issued it carried more than six workers for loading and unloading and in such case also the insurance company would be liable if they sustained injuries in the accident. The Tribunal found that the workers travelled in the lorry were third parties and therefore the insurer was liable to pay the compensation. It further found that the maximum liability of the insurer was limited to Rs. 1,50,000/-in each case. On the basis of the above findings the insurer was directed to indemnify the owner of the vehicle for the compensation awarded.

6. In the appeals, counsel for the appellant contended that the workers in the lorry were gratuitous passengers and not carried in pursuance of a contract of employment. He further contended that the liability of the insurance company was limited to the extent provided in Section 95(2)(a) of the Motor Vehicles Act, 1939 and as contained in Ext. R1 policy. As against these contentions the

''counsel for the claimants submitted that having admitted or found that the persons who travelled in the lorry were third parties as also gratuitous passengers the insurer would be liable to indemnify the owner for the compensation awarded. In support of this position, strong reliance was placed on the decision of the Supreme Court in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, . That was a case coming under the provisions of the Motor Vehicles Act, 1939 like the one that we have with us now. In that case the Supreme Court after extracting Section XX(1)(a) contained in the policy which in effect provides that the insurer shall become legally liable to pay in respect of the death or bodily injury to any person held thus :

"Thus u/s II 1 (a) of the policy the insurer has 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 expression ''any person'' would undoubtedly Include an occupant of the car who is gratuitously travelling in the car. The remaining part of Clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed by favour of the claimant."

7. What was involved in the above case before the Supreme Court was a comprehensive policy and vehicle, a motor car. The common insurance policy involved in all these cases was produced by the appellant in O.P. No. 868 of 1986 as is evident from para 6 of the written statement and marked as Ext. B1. It was a commercial vehicles comprehensive policy arid comprehensive premium of Rs. 3,756/- had been collected and the limit of liability u/s II (1) specified was Rs. 1,50,000/- Now let us examine the provisions contained in Section II (1) of Ext. Bl policy which provides for ''Liabilities to third parties''. The relevant portion is extracted hereunder :

"Section II -- Liabilities to Third Parties :

1. Subject to the limits of liability the Company will indemnify the insured against all sums including claimant''s cost and expenses which the insured shall become legally liable to pay in respect of-

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading of the Motor Vehicle

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle."

The above terms of the policy are substantially the same as involved in Amrit Lal Sood''s case (supra),

8. The vehicle involved in the motor accident on hand is admittedly a goods

vehicle authorised to carry six persons. The finding of the Tribunal is that the persons travelled in the vehicle are third parties. This finding is final and conclusive. The counsel for the appellant pointed out that the vehicle in question is a goods vehicle and hence gratuitous passengers travelled in such vehicle cannot be treated as third parties. It cannot be said so in all situations inasmuch as it depends on the terms of policy governing the vehicle. As pointed out above. Section II (1)(i) contained in the present policy takes death of or bodily injury to ''any person'' caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle. A gratuitous occupant of the vehicle may come within its scope. The decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, was distinguished in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, by the Supreme Court as below :

The High Court has placed reliance on the judgment of this Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, : Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . That judgment was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement u/s 95 of Motor Vehicles Act. That decision will have no bearing in the present case inasmuch as the terms of the policy here are wide enough to cover a gratuitous occupant of the vehicle."

In Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, the Supreme Court observed :

"Thus, to find out whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough, it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more than six persons in all in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy."

What we are dealing with here is a beneficial legislation as a social security measure. We cannot obliterate the object of the legislation by giving a narrow interpretation. In this case we are of the view that the present appeals can be disposed of in view of the following factual situation involved in these cases.

9. Out of the fifteen claimants it is practically impossible for us to find out who are the six loading workers admittedly covered by the insurance policy. The names of such workers are not incorporated in the policy. The written statement filed on behalf of the Insurance Company does not contain the names and details of such loading workers. The Assistant Divisional Manager of the Insurance Company was examined as DW-1 and he had deposed that the policy would

cover six persons but he had not supplied the names and details of such persons. Thus the appellant admits that they are liable to indemnify the owner of the vehicle for the compensation awarded for six persons who are authorised to travel in the vehicle. That means, the appellant is liable for the compensation to six persons out of the fifteen claimants. Thus the total compensation payable by them is Rs. 9,00,000/- (1,50,000 x 6 = 9,00,000). As pointed out above, the total compensation awarded by the Tribunal in all the claim petitions taken together would come to Rs. 5,02,000/-. Thus it can be seen that the amount of total compensation payable to all the claimants does not exceed the overall liability of the insurer, namely, Rs. 9,00,000/-. In the aforesaid factual premise we do not propose to interfere with the common award impugned herein, passed by the Tribunal. This is the only feasible method which we can adopt in this case in view of the dearth of the relevant materials required for decision.

10. The impugned award is confirmed and the appeals are accordingly dismissed.

No order as to costs. No merits in cross-objections and hence dismissed.

