
(1989) 12 KL CK 0023
In the High Court Of Kerala
Case No : M.F.A. No. 98 of 1989

National Insurance Co. Ltd.

APPELLANT

Vs

Annamma Babu and Others

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1990) ACJ 909 : (1990) 3 ILR (Ker) 934 : (1990) KLJ 172

Hon'ble Judges : K.P. Radhakrishna Menon, J; B.M. Thulasidas, J

Bench : Division Bench

Advocate : Ittiera Kalliath, for the Appellant; Mathai M. Paikaday and Alexander Skaria, for the Respondent

Final Decision : Allowed

Judgement

B.M. Thulasidas, J.—The 2nd respondent in O.P. (M.V.) No. 55 of 1987 on the file of the Motor Accidents Claims Tribunal, Quilon, is the appellant.

2. The above petition for compensation was filed by the wife, two minor children and the mother of deceased Babukutty, who died in a motor cycle accident that took place on 10.8.1986 around midnight at Punnala in Pathanapuram-Punnala Road. At the time of the accident, the deceased was travelling in motor cycle No. KRQ 8812 that belonged to him, as a pillion rider. The vehicle had been insured with the appellant, and at the time of the incident, it was driven by one M.K. Daniel, the 5th respondent in this appeal who was the 1st respondent before the Tribunal. An amount of Rs. 5,00,000/- was claimed as compensation.

3. The 5th respondent was ex parte. The appellant, 2nd respondent before the Tribunal, contended that there was collusion between the 1st respondent Daniel and the petitioners, and stated that the deceased, who was the owner of the vehicle, could not claim the benefits of the policy because it was issued to cover only third party risks.

4. The Tribunal after evaluating the evidence produced by the parties held that

the claimants were entitled to get an amount of Rs. 2,54,000/- as compensation with interest at 6 per cent thereon from 17.1.1987 for a period of three months and thereafter at 12 per cent till realisation of the entire compensation. It is clear from the award that both the appellant and the first respondent have been made liable for the compensation. There is a rider added to the above direction, namely, that execution for realisation of the compensation shall be taken against the appellant in the first instance. The Tribunal has also apportioned the compensation amount among the various claimants. It is this award that is under challenge in the appeal.

5. The point urged by the learned counsel for the appellant can be stated thus:

Whether the award directing the appellant to pay the compensation amount is sustainable in law?

6. The answer depends upon the construction of Sections 94 and 95 of the Motor Vehicles Act, 1939. Section 94 provides for compulsory insurance against third party risk and forbids use of a motor vehicle at a public place unless there is in force in relation to the use of the vehicle a policy of insurance complying with the requirements of Chapter VIII of the Motor Vehicles Act. In order to say that an insurance policy is one issued under Chapter VIII, the same shall satisfy the requirements prescribed u/s 95. This section also prescribes the limits of the liability of the insurer under the policy. We shall now extract Section 95 (leaving out unnecessary parts):

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

(a) X X X

(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 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:

From the plain and unambiguous language employed in this section it is clear that the policy is intended to insure the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which the holder of the policy may incur in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The policy of insurance which satisfies the requirements prescribed u/s 95 is a contract of indemnity. It is fundamental that in a contract of indemnity the indemnifier is liable for damages or compensation which is relatable to or arising from the contract or on tort. The

saying that "the first principle of an insurance policy which insures the person or classes of persons specified in the policy against any liability which may be incurred by him..." is that the insurer will pay if the insured has been found liable or has sustained loss which has been proved. The clause "against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place" makes it abundantly clear that the policy issued under Chapter VIII of the Act is one intended to cover the liability the insured would incur in terms of the contract. A claim for reimbursement can be admitted only if the insured has incurred a liability under the terms of the policy and in the particular context of the provisions in Chapter VIII of the Act, such liability must have arisen in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle which has been insured, in a public place.

7. It is in this background the question as to whether the claim at the instance of the legal representatives of the insured, who died in the accident, is maintainable has to be considered. The counsel for the legal representatives of the insured argues that since the insured was the pillion rider he must be treated as a third party within the meaning of that expression under Clause (d) of Section 93. According to the learned counsel, the language employed in Section 95(1)(b)(i) suggests that the third party risk covered by the policy includes the risk of the insured as well because the coverage is in respect of the vehicle and not in respect of the insured only. This argument which was sought to be supported on the basis of the ruling reported in *Zakaria and Others Vs. Naoshir Cama and Others*, cannot be countenanced. He also relied upon a decision of the House of Lords in *Digby v. General Accident Corporation* (1942) 2 All ER 319. In that case, the House of Lords by majority held that an authorised driver is entitled to be indemnified against a policy-holder in her claim against him. Their Lordships held:

... Such a policy is necessarily extended to insure an authorised driver against claims by parties injured by his negligence and in this clause the authorised driver becomes the insured and the insurance company are the insurers. That being so, the door is opened for the policy-holder to become a third party and claims by the policy-holder against the driver must be indemnified by the company.

This decision which rested on the particular clauses in the policy, in our view, has no application to the facts of the case. Here it can be seen that the insurance policy is one issued under Chapter VIII, to satisfy the requirements prescribed u/s 95. The liability of the insurer and the eligibility of the insured to claim indemnification, require to be considered with reference to the provisions of Section 95 and allied provisions contained in Chapter VIII. A reference in this connection to Sub-section (5) of Section 95 of the Act will be profitable. It provides thus:

Notwithstanding anything elsewhere contained in any law, a person issuing a

policy of insurance under this section shall be liable to indemnify the 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.

The qualifying word "specified" in this subsection, makes it clear that only person or classes of persons who require to be indemnified by the insurer is the one "specified in the policy". This clause, in our view, makes a distinction between the rights of the insured and the liability which the policy purports to cover. The insurer can be made liable only if it is shown that the insured had been found liable. In other words, proof of negligence of the insured is the sine qua non for the insurer's liability to indemnify. The liability of the insured is passed on to the insurer by operation of law. It would follow, therefore, that if the insured himself--in the absence of specific terms to extend the cover to him too--meets with a motor accident and dies or sustains bodily injury, Section 95(1)(b)(i) cannot be said to come into operation because the insured is not a "third party" within the meaning of the Act.

8. The word "third party" under the section is intended to connote a person who stands outside the agreement or contract between the insured and the insurer though he may be the beneficiary thereunder. In our view, to bring within the words "third party" the insured as well, is to do violence to the expression. In assessing the liability of the insurer, the terms of the policy will have to be considered. It is well to remember that an insurance contract may cover risks which are in excess of or beyond the statutory limits set by Section 95 of the Act. But, the insured may not be entitled to contract himself out of the statutory requirements. The parties may agree to terms and conditions for a larger cover or to include more classes of persons including the insured outside the statutory requirements. But, under the scheme of Chapter VIII of the Act, the benefits of the policy cannot be claimed by the insured who sustained injuries or by his heirs on his death. The contention to the contrary, in our view, is unsustainable.

9. In an identical case (where the driver of an autorickshaw claimed compensation for damage to the vehicle and the injuries sustained by him) a Division Bench of this court in Mathew Koshy Vs. The Oriental Insurance Co. Ltd., , has held thus:

A contract of insurance in the widest sense of the term may be defined as a contract whereby one person called the "insurer" undertakes in return for the agreed consideration called the "premium" to pay to another person called the "assured" a sum of money or its equivalent on the happening of a specified event. (See E.R. Hardy Ivamy: General Principles of Insurance Law, 4th Edn., p. 3). A system of compulsory insurance was enacted by the Road Traffic Act, 1930. The compulsory insurance was introduced to cover the liability which the owner of the vehicle may incur. The purpose of the enactment, the Road Traffic Act and making the insurance compulsory, is to protect the interest of the successful claimant from being defeated by the owner of the vehicle. Section 95(1)(b)(i) of the Act says that the policy of insurance must be a policy which insures the

person or classes of persons specified in the policy. The classes of persons are mentioned in Section 95(1). A reading of the section would reveal that the compulsory insurance contemplated u/s 95 of the Act is to indemnify the owner of the vehicle from the liability, if any. If the owner himself suffers an injury in an accident, he does not acquire any right to get compensation from the insurance company under the policy issued to him. The insurance policy issued by the respondent is a contract of indemnity to satisfy the conditions laid down u/s 95 of the Act. The ingredients of the law of insurance are nowhere provided in the special statute. Necessarily, therefore, the matter will be governed by the general substantive law which remains unaltered by the special law. If the insured is not liable, then the insurer is also not liable. In other words, the liability of the insurer depends upon the liability of the insured. Under the law, negligence of the owner or driver is a sine qua non for such liability.

The above decision squarely applies to the present case.

10. The award passed by the Tribunal is hence unsustainable and is set aside. The appeal is accordingly allowed, but, in the circumstances of the case, there will be no order as to costs.