

(2002) 12 KL CK 0053
In the High Court Of Kerala
Case No : M.F.A. No. 932 of 1994

National Insurance Co. Ltd.

APPELLANT

Vs

Gouri

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95
Motor Vehicles Act, 1988 — Section 147, 147(2)

Citation : (2003) ACJ 1183 : (2003) 2 ILR (Ker) 198 : (2003) 1 KLT 259

Hon'ble Judges : Pius C. Kuriakose, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : P. Jayasankar, for the Appellant; T.R. Ramachandran Nair, N. James Koshy and V.D. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The insurer has come up with this appeal contending that, in terms of the admitted insurance policy, the liability is limited. In spite of that, the tribunal has awarded the amount as if the policy did not have any such limitation clause.

2. It is true that the policy in question was one issued u/s 95 of the Motor Vehicles Act, 1939, covering a period from 10.11.1988 to 9.11.1989. During the currency of the policy, that Act was repealed and a new Act, the Motor Vehicles Act, 1988 was enforced with effect from 1.7.1989. From that day onwards, in terms of Section 147 of that Act, the policy cannot have any limitation as was there in terms of Section 95 of 1939 Act. If the new Section is applied, the insurer will not get the benefit.

3. The accident occurred on 10.9.1999, after enforcement of the new Act. The proviso to Section 147(2) reads as follows:

"Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue "to be

effective" for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier."

In terms of this provision, the existing policies issued by the authorised insurers have to be continued to be effective for 4 more months or till the expiry of the policy, whichever is earlier. It is contended, stressing reliance on this proviso, that during the four months from 1.7.1989, the entire policy is saved: Therefore, the insurer will have the liability only in terms of the policy issued as enunciated in Section 95 of the 1939 Act. So the tribunal was not justified in finding that the policy did not have any limitation.

4. We are unable to agree with this contention. The policy of insurance is a contract. Necessarily contract will be binding between the parties even for the entire period. Whatever be the position, the insurer cannot shirk out of that liability. So there was no reason to limit that policy for four months. The provision in Section 147(2) of the new Act saves the policy. The policy is saved in terms of the main provision contained in Section 147 of the new Act, as if there is no limit of liability.

5. Now that position has been clarified by the Apex Court in the decision reported in *National Insurance Company Ltd. Vs. Behari Lal and Others*, .

6. Counsel for the appellant vehemently contended that the proviso to Section 147(2) contained a phrase "with any limited liability and in force". This is with respect to the limited liability in terms of the existing policy. Explaining those words, the Supreme Court held as follows:

"Therefore, the phrase means a statutory policy under the old Act with the limit prescribed therein which was valid immediately before the commencement of the new Act. The words are not employed to limit the liability of an insurance company to the amount specified in the policy by virtue of the provisions of Section 95(2) of the old Act either for a period of four months or for a lesser period during which the policy is valid."

The Supreme Court further, referring to Section 217 of the New Act which repealed the old Act held as follows:

"Sub-section(1) of Section 217 repeals, inter alia, the old Act. Clause (c) of Sub-section (2), which is relevant, provides that notwithstanding the repeal under Sub-section (1) of the old Act any document, referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to the New Act or the corresponding provisions thereof."

The policy in question was one taken on the basis of the statutory mandate. Necessarily it is document referred to in Clause (c) of Sub-section (2) of Section 217 which shall have to be read in the light of the provision contained in the New Act. So, as held by the Supreme Court:

"It follows that the proviso to Sub-section (2) of Section 147 does not limit the

liability of insurance companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95(2) of the old Act, which is in force before the commencement of the new Act or till the date of expiry of such a policy, whichever is earlier."

Thus, we have to endorse the view taken by the Tribunal below in the impugned award. Appeal fails, dismissed.