
(1997) 03 KAR CK 0005
In the Karnataka High Court
Case No : MFA. 1624 of 1994

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Rasheeda and Another

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 146, 147, 147 (i) (b) (ii), 166 (1)

Citation : (1998) ACJ 1404 : (1997) ILR (Kar) 2697

Hon'ble Judges : Harinath Tilhari, J

Bench : Single Bench

Advocate : M. Sowri Raju, for the Appellant; H.K. Ramachandra, for R-1, for the Respondent

Judgement

Harinath Tilhari, J.—This is an appeal by the Insurance Company from award dated 9.3.1994 given by the II Addl. District Judge Motor Accident Claims Tribunal Mysore in MVC. No. 576/1992.

The sole question agitated in this case is whether the Insurance Company is liable to pay compensation awarded to one who is travelling in a private car. Whether Insurance Co., is liable to pay compensation for injury or death of such person in motor accident. The facts of the case in brief are that on 10.5.1992 one Abdul Rehman along with members of his family and relatives was travelling in an Ambassador car bearing No. KA-91-M-3200 from Karur to Bangalore via Virajpet and on account of rash and negligent driving of the said car by the first respondent in MVC. Case No. 576/92 the accident did take place at 3 AM near Panchavati on B.M. road and in that accident, the claimant husband Abdul Rehman died on the spot and several other persons were injured. The claimant/respondent-1 preferred a claim petition u/s 166(1) of the Motor Vehicles Act, 1988 for the death of her husband and claimed compensation to the tune of 6,10,000/-. The application u/s 140 of the Motor Vehicles Act, 1988 was moved and the claimant made a claim for interim compensation which is described u/s 140 of the Act as "No Fault Liability" to the tune of Rs. 25,000/ -. The tribunal

appears to have granted time to the respondents to file objections but it appears from the order none was filed. Respondent No. 3 at a later stage prayed for some more time to file the objections but the Tribunal in view of the fact that sufficient time had already been granted, rejected the prayer for postponement. The Tribunal passed the award after having found that the death of the claimant's husband having occurred in the motor accident on 10.5.92 involving car bearing No. KA-01-M-3299, the owner of the vehicle respondent-2 is liable to pay compensation u/s 140 of the Act of 1988 to the tune of Rs. 25,000/-. It further found that respondent-3 is the Insurance Company with which the car has been insured. So it directed the said amount to be paid by the Insurance Company along with 6% interest per annum from the date of publication till the date of deposit and prescribed the period of the one month for its deposit.

2. Having felt aggrieved from this order, the Insurance Company has come up in Appeal.

3. I have heard Sri Sowri Raju, learned Counsel for the appellant and Sri H.K.Ramachandra learned Counsel for R1.

4. Sri Sowri Raju, learned Counsel for the appellant insurance Company urged that by the tribunal the Insurance Company has erroneously been held responsible to pay the compensation amount u/s 140 of the Act. Learned Counsel submitted that deceased was travelling with his family in a private car and so far as the private car is concerned, there is no liability of the Insurance Company to pay the compensation amount as the person travelling in a private car cannot be termed as a third party and they are not required to be covered by the policy. Learned Counsel submitted that 3rd party means a person other than the persons travelling in the vehicle. Learned Counsel further submitted that 3rd party meant person on the road but it does not include a person travelling in the private vehicle and therefore no liability could be fastened on the Insurance Company with reference to the compensation, if any, payable by the owner and the Insurance Policy even if it was a mandatory requirement of law and that the policy is required to be taken u/s 146 of Motor Vehicles Act, 1988 which is almost para materia and equivalent to Section 94 of Act 4 of 1939. In support of his contentions Sri Sowri Raju relied upon the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, and specially on observations made in Para 20 thereof, Sri Raju further made a reference to the decision of the Kerala High Court in the case of CHACKO v. ROSAMMA (1991 (2) CCC 588).

5. These contentions of Sri Sowri Raju have been hotly contested by the learned Counsel for respondents Sri Ramachandra. Learned Counsel emphasised on the use of expression "Any person" in Section 147 of the Act and urged that it includes even persons travelling in a private car. He submitted that in view of Section 147 of the Act, the policy is required by itself to cover the risk for compensation payable by the owner in case of death of a traveller in Private Car. Sri S. Ramachandra made reference to the decision of United India Insurance Co.

Ltd. Vs. P.V. Lakshmanan, and the decision of this Court in Shanthabai and others Vs. Shekappa and others, . He also made reference to the single Judge decision of the High Court of Jammu & Kashmir in National Insurance Co. Ltd. Vs. Faqir Chand and Others, .

6. Section 147 of the Act of 1988 provides for the requirement of policies and extent of limited liability. Sub-sections (1) and (2) of Section 147 are very material for the purpose of this case and it will be profitable to refer it, which reads thus:-

"147: Requirements of policies and limits of liability -

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(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: provided that a policy shall not be required -

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee --

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation:- For the removal of doubts it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(Corresponding Law : Section 95(1) of Act IV of 1939)

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident upto the following limits, namely -

(a) save as provided in Clause (b) the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand;

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."

(Correspondent law: Section 95(2) of Act IV 1939)

7. Sub-sections (3), (4) and (5) are not material relevant for our purpose. A reading of Sub-section (1) per se shows that statutory requirements of policy and the limits of liability. Firstly, we have to make out a distinction in Sub-clauses 1(i) and 1(ii) of Section 147 so-far-as the death of bodily injury to any person in public service vehicle is concerned. Clause II has provided separately, so far as the liability arising from death or bodily injury to "Any Person" caused by or arising out of the use of vehicle in a public place is concerned. It has been mentioned and provided u/s 147(i)(b)(ii) of the Act. The expression used as "Any Person" is of wide connotation and includes in itself and within the frame work of expression "Third Party" used in it is included any person other than the insurer and the insured. It may include in itself a traveller, in a private vehicle. It may also include in itself the person who is a pedestrian and has died or has been injured by the use of private vehicle on the road. It may also include as a case of pedestrian/injured or a pedestrian who has died on account of injury caused to him by the use of a vehicle may be a public service vehicle or private vehicle. But so far as the passengers in public service are concerned there category has been mentioned separately. The distinction in the use two expressions in the two clauses per se reveal that any person may include a traveller in a private vehicle. The learned Counsel contended that it does not include in itself a traveller in private vehicle. I am unable to accept this contention. The private vehicle is also required to be properly insured. The object behind the provision requiring compulsory insurance is to protect the members of community travelling in vehicles or using roads from the risk attendant upon the user of motor vehicle or roads and to make realisation of compensation a reality in terms of money to the injured, as-well-as to the heirs or legal representatives of the deceased who dies on account of motor accident. If two interpretations are possible it has been held that interpretation beneficial to the subject i.e., injured or heirs of deceased and the one which promotes object and purpose of the Act is to be adopted. The object of such provision has been very well explained and indicated by their Lordships of the Supreme CoUrt in the case of Skandia Insurance Co. Ltd. Vs.

Kokilaben Chandravadan and Others, . That in para-13 of the said report it is held thus:

"In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependents of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risk (vide Section 96). In other words the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the

dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective."

8. The decision of their Lordships of the Supreme Court relied by the learned Counsel for the appellant in the case of *PUSHPA BAI v. RANJIT G.P.CO.*, is not applicable to the present case in relation to interpretation of Section 147 in view of the difference and distinction in between language of Section 95(1)(a) and 95(ii)(b)(i) of Motor Vehicles Act 1939 and that of Section 147 of the Act of 1988. It will be profitable to quote the observations of their Lordships which will indicate the basis on which their Lordships have taken the view in that case the law does not require that the policy of Insurance should cover the risk of passenger who is not carried or hired or of reward. In Para 20 their Lordships observed as under:

"Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act 1960, and excluded the liability of the Insurance Company regarding the risk to the passengers Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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 plea that words "third party" are wide enough to cover all persons except the person and the insurer is negated as the insurance cover is not available to the passengers made clear by the proviso to subsection which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason for in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

9. A perusal of these observations per se reveals that in order to reject the plea raised therein that the expression third party is wide enough to cover all persons except, person and the insurer, the basis provided has been by the proviso clause ii to Section 95(i) of the Act of 1939. No doubt under M.V. Act of 1939 proviso

clearly says that policy is, not required to cover the liability in respect of death or bodily injury to persons being carried in or upon entering or mounting or alighting from the vehicle at the time of occurrence of the event out of which the claim arises, subject to the exception which is indicated and provided by the expression "except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment". The Section 95 of Act of 1939 very clearly provides by virtue of proviso II inserted therein, with exception to the passengers for hire or reward taken in the vehicles in which passengers are taken for hire or reward or who are taken by reason of contract, Insurance Policy will not be required to cover the risk of any persons travelling in the vehicle who are not carried for hire or reward. This Clause II to the proviso to Section 95 of Old Act has been omitted from the new Act, The legislature has completely omitted to enact this clause in proviso to Section 147(1) when it enacted Motor Vehicle's Act, 1988. It is to be assumed and presumed that Legislature when enacting the new Act and when enacting Section 147 knowingly changed the tenor of language and omitted proviso two to Section 95 of Act of 1939 and did not incorporate that in Section 147 of Act of 1988. It intended to provide something different and modified from the Scheme of Section 95 of Old Act u/s 147 to that extent. It is well settled principles of law that if under subsequent Act, the legislature changes the tenor of language, omits certain provisions from being incorporated which existed at the time of enactment of New Act replacing Old Act and the subject matter, the intention emerging therefrom i.e., the change has got to be given effect-to. The effect of change of language is revelation of legislative intent that expression "Any Person" and the third party used in the Act will also include any person even travelling in the vehicle without paying any hire etc. If the Legislature would not have different intents in enacting Section 147 of Act of 1988 than revealed by Section 95 of Old Act into, it would have incorporated in extenso Section 95 of the Act into, it would have incorporated in extenso Section 95 of the Act of 1939 in the Act of 1988 as it did exist in Act of 1939. The Parliament would not have omitted Clause II to proviso to Section 95(1) when it enacted Section 147. Therefore, in my opinion the expression "Third Party" or "Any Person" used in Section 147 of Act of 1988 includes in itself even a person travelling in a private car. When I so opine, I find support from the single Judge decision of High Court of Jammu and Kashmir in the case of NATIONAL INSURANCE CO., v. FAQIR CHANDRA as well as the decision of this Court in the case of UNITED INSURANCE COMPANY v. P.B. LAXMAN and the decision of this Court in the case of SHANTI BAI v. SHEKAPPA. Thus considered in my opinion the appeal has got no merits and I do find that the Tribunal has not committed any error of law or jurisdiction in holding that Insurance Co. is liable to pay that amount as the liability of the Insurance Co. runs with the liability of the owner of the vehicle and so liability fastened u/s 140 will also be covered by the policy. The appeal as such is to be hereby dismissed. It has been brought to my notice that the main claim is pending for decision. It is expected that Tribunal will expeditiously decide the matter as the occurrence had taken place some time in 1992. The appeal is thus

dismissed and finally disposed of the Tribunal is directed to decide the petition within a period of six months from the date of receipt of this order.