**(2001) 01 KAR CK 0065**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 2244 of 1990

National Insurance Co. Ltd. APPELLANT

Vs

Thippawwa and Others RESPONDENT

**Date of Decision :** 01-01-2001

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 2 (15)

**Citation :** (2002) 1 ACC 717 : (2002) ACJ 717

**Hon'ble Judges :** T.N. Vallinayagam, J

**Bench :** Single Bench

**Advocate :** R. Jaiprakash, for the Appellant; Shantharam Sawanth and Gadi, for S.V. Angadi, for the Respondent

**Final Decision :** Allowed

## Judgement

T.N. Vallinayagam, J.—This M.F.A. is preferred by the insurance company against the judgment and award dated 20.7.1990 passed in M.V.C. No. 4 of 1988 by the M.A.C.T., Belgaum at Belgaum.

2. The short facts are that there was an accident on 30.9.1987 while the claimant was travelling in autorickshaw bearing registration No. MEH 7865 belonging to the respondent No. 2 driven by the respondent No. 1, which resulted in compound fracture of tibia and fibula. The autorickshaw dashed against a parked bullock-cart. Claiming a compensation of Rs. 1,25,500, the claimant came to the court and the Tribunal has chosen to award a global compensation of Rs. 40,000 against all the respondents directing in particular the respondent No. 3 before the Tribunal, namely, the insurance company primarily liable to pay the said award amount.

3. The appeal preferred by the insurance company confined only to the apportionment of liability u/s 95 (2) (b) of the Motor Vehicles Act 1939. No other point was raised in the appeal and the learned Counsel confined himself only to the question of maximum liability under the insurance policy.

 

4. The learned Counsel relied upon the India Motor Tariffs (Rationalisation & Revision) dated 1.2.1982, wherein Annexure 14 is relied upon to say that the extent of liability is limited to Rs. 15,000 with reference to the premium paid. Consequently, it is claimed that the maximum liability that can be foisted upon the insurance company can be only Rs. 15,000 in relation to the premium paid. Reliance was placed upon the dictum of this Court in United India Fire & Genl. Ins. Co. Ltd. v. U.E. Prasad 1985 ACT 280 (Karnataka) wherein a Division Bench of this Court has held that the maximum liability in respect of auto which is called as motor cab was Rs. 10,000 in that case. Thus making it clear that the liability of the company per passenger would be limited only to the policy of the premium paid thereof. The relevant passage reads as follows:

The auto could be described as motor cab. A motor cab is defined u/s 2(15) of the Motor Vehicles Act. It states:

Motor cab means any motor vehicle constructed, adapted or used to carry not more than 6 passengers excluding the driver, for hire or reward.

As such the autorickshaw falls within the category of motor cab (vide Sumitra Autorickshaw Sahakari Sangh Ltd. v. Director of Transport at Bombay AIR 1967 Bombay 403) and therefore, the liability of the insurance company in the case of the passenger in the motor cab would extend to Rs. 10,000.

The dictum in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, was also relied upon by the learned Counsel, wherein the Supreme Court has held that when a premium paid at a particular rate by the owner, the policy covered only the statutory liability of Rs. 15,000. The relevant para reads as follows:

In the present case, the premium which has been paid is at the rate of Rs. 12 per passenger and is clearly referable to the statutory liability of Rs. 15,000 per passenger u/s 95 (2) (b) (ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant company and the respondent No. 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of M.K. Kunhimohammed v. PA. Ahmedkutty 1987 ACJ 872 (SC). The appellant company is, therefore, entitled to succeed to the extent that it has been directed to pay to respondent Nos. 1 to 3 any amount in excess of Rs. 15,000.

5. Thus it is contended that the liability cannot be more than Rs. 15,000 per

 

passenger as admittedly the premium paid is only Rs. 30.

6. I have heard the learned Counsel for insurance company and Mr. Gadi for Mr. S.V. Angadi, appearing for respondent Nos. 2 and 3.

7. The short question that is involved in the above M.F.A. is: What is the maximum liability in respect of the passenger travelling in a motor cab which involves in an accident?

8. The fact applicable to the present case. The accident having taken place on 30.9.1987 and the new Act came into force only on 1.7.1989. Section 95 (2) (b) reads as follows:

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger.

9. Thus, section itself limits the liability and the dictum of the Division Bench and the Apex Court clearly indicates that the maximum liability is only Rs. 15,000. There is no dispute that the premium paid was only Rs. 30.

10. Consequently, applying the above principle of law, I hold that the liability of the insurance company is restricted only to Rs. 15,000 and the appeal is accordingly allowed and the liability of the insurance company is restricted to Rs. 15,000.

 