(2001) 01 KAR CK 0093

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2244 of 1990

National Insurance Company APPELLANT

Vs

Smt. Thippawwa and Others RESPONDENT

Date of Decision : 01-01-2001

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

Citation : (2001) 2 KCCR 1031

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

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant; Shantharam Sawanth, for Respondent 1 and Gadi, for S.V. Angadi, for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—This Miscellaneous First Appeal is preferred by the Insurance Company against the judgment and award dated 20.7.1990 passed in MVC 4 of 1988 by the MACT 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 second Respondent driven by the first Respondent, 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 third Respondent 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 and Revision) Ist February, 1982, wherein Annexure-14 is relied upon to say that the percentage 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 and General Insurance Co. v. U.E. Prasad and Ors. 1984 (2) Kar LJ 340, 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 at any time 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 Summitra Autorickshaw Sahakari Sangh Limited and Anr. v. Director of Transport at Bombay and Ors. AIR 1967 Bom 403 and therefore the liability of the Insurance Company in the case of a passenger in the Motor can 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 paragraph 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 fifteen thousand rupees 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 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 on 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 Autorickshaw Sahakari Sangh Limited and Anr. v. Director of Transport at Bombay and Ors. AIR 1967 Bom 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 Vs. P.A. Ahmedkutty and Others, . The appellant company is, therefore, entitled to succeed to the extent that it has been directed to pay to Respondents 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 Respondents 2 and 3.

7. The short question that is involved in the above Miscellaneous First Appeal 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 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 rupees fifteen thousand 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 Supreme Court clearly indicates that the maximum liability only Rs. 15,000/-. There is no dispute that the premium paid 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/-.