

(1995) 08 KAR CK 0036
In the Karnataka High Court
Case No : MF.A. No. 1181 of 1986 etc.

New India Assurance Co. Ltd. and Others	APPELLANT
Vs	
Nagarathna and Others	RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 85, 85 (2)

Citation : (1997) ACJ 376 : AIR 1996 Kar 396 : (1996) ILR (Kar) 3041 : (1996) 6 KarLJ 77

Hon'ble Judges : S. Venkataraman, J

Bench : Single Bench

Advocate : C.K. Kambevanda and V. Markande Gowda, for the Appellant; V. Markande Gowda, Jayakumar S. Patil and C.K. Kambeyanda, for the Respondent

Judgement

1. Both these appeals arise out of the judgment and award dt. 25-2-1986 passed by the M.A.C.T.-I, Bangalore Rural District, awarding a compensation of Rs.83,500/- for the death of one A. E. Krishnappa, the husband of the first claimant and father of claimants 2 to 4 who are impleaded as respondents 1 to 4 in M.F.A. 1181/86 and who are the appellants in the other appeal.

2. For the purpose of convenience the parties will be referred to by the rank they held in the Tribunal.

3. Now there is no dispute about the facts that on 22-9-1984 when the deceased Krishnappa was going on the pillion of the motor cycle M.F.S. 8212 belonging to the first respondent and driven by the third respondent to come to Bangalore and that on the way on account of the rash or negligent driving of the motor cycle by the third respondent Krishnappa was thrown off and he sustained bleeding injuries to which he succumbed later. The Tribunal, for the purpose of determining the compensation payable, has taken the loss of dependency suffered by the petitioner at. Rs. 500/- per month and adopting the multiplier 12, as the deceased was aged 33 years, has awarded Rs. 72,000/-towards loss of dependency. The Tribunal has also awarded Rs. 5,000/- towards loss to the

estate of the deceased, Rs.4,000/- towards loss of consortium and Rs. 2,500/- towards expenses for transporting the body and for funeral, in all a total sum of Rs. 83,500/- has been awarded as compensation. Though the insurer, third respondent, had contended that under the policy the risk of the pillion rider is not covered and as such they are not liable to pay the compensation, the Tribunal has negated that contention on the ground that the policy was a comprehensive policy.

4. The insurer-third respondent has filed the appeal in M.F.A. 1181/86 questioning the correctness of the finding of the Tribunal holding the insurer liable to pay the compensation. The petitioners have sought for enhancement of the compensation in M.F.A. 1314/86.

5. The first point that requires consideration is whether the Tribunal is correct in holding that the policy covers the risk of pillion rider also as it is comprehensive policy. The learned counsel for the insurer contended that there is no statutory obligation on the part of the insurer to cover the risk of pillion rider that even under the terms of the policy issued in this case there is no coverage of the rash considering the pillion rider and that the Tribunal was not justified in fastening the liability on the insurer merely because the policy issued was a comprehensive policy. He relied on the decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, to contend that merely because a policy is a comprehensive policy it does not mean that it covers all types of risks and that it is only such risks, for which extra premium is paid and there is a special agreement for coverage which would be covered.

6. In the above decision, dealing with the scope of a comprehensive policy, the Supreme Court has held as hereunder:

"Even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitle the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-sec. (2) of S. 85 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers etc., in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regulations framed for the purpose."

In view of the above decision it follows that merely because a policy is a comprehensive policy it is not permissible to hold that the risk of the pillion rider is also covered.

7. Even the learned counsel for the first respondent-owner of the vehicle did not contend that either there is a statutory requirement to cover the risk of a pillion rider or that because the policy is a comprehensive policy straightway it must be held that all risks are covered. But he sought to contend that from the beginning just as in the case of comprehensive policy for a car it has been the intention of the insurer to cover the risk of a pillion rider, also when a comprehensive policy is issued and that the very fact that the Tariff Advisory Committee has issued a circular dt. 2-6-1986 stating that the comprehensive policy should cover liability to pillion passengers treating them as occupants in the motor cycle and provide indemnity to such persons, shows that so far as a motor cycle is concerned the comprehensive policy is always understood to include the risk of the pillion rider. He pointed out that no extra premium is collected after the issue of this circular to cover the risk of the pillion rider and that that is another circumstance in support of his contention. According to him even if a motor cycle owner wanted to take a policy covering the risk of even the pillion rider he was not required to pay any separate tariff for that as no tariff had been fixed to cover the risk of pillion rider and that as such the comprehensive policy must be taken to cover the risk of the pillion rider. Elaborating his contention the learned counsel pointed out that it is only in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, the Supreme Court held that there is no statutory requirement for covering the risk to passengers in a car and that an Act policy therefore does not cover the risk to passengers, that till that time even the insurers intended that the policy (sic) cover the risk to passengers and that after the judgment of the Supreme Court a circular has been issued on 23-2-1978 making it clear that all existing policies should be deemed to incorporate an amendment covering the risk to the occupants of the car who are not carried for hire or reward. It is his contention that on the same lines it must be held that the comprehensive policy issued in respect of a motor cycle is intended to cover the risk of pillion rider. Even though this clarification has been issued only on 2-6-1986 according to him, it has to be applied to the policy issued in this case also.

8. The learned counsel for the insurer contended that the circular issued on 2-6-1988 shows that a decision was taken to cover the risk of pillion riders also at that time and that the benefit of that circular cannot be sought for in respect of a policy issued much prior to the date of the circular and which was not in force when the circular was issued.

9. Merely because no separate tariff had been prescribed to cover the risk of a pillion rider, it would not be correct to hold that a comprehensive policy issued in respect of a motor cycle would also cover the risk of the pillion rider. The terms of the policy make it clear that except under certain circumstances the policy

does not cover the risk of a pillion rider., Ex. R1 is the policy issued in this case. Section 2(1)(a) of that policy reads as hereunder :

"1. Subject to the limits of liability the company will indemnify the insured in the event of accident caused by or arising out of the use of the motor cycle against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of:--

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of S. 85 of the Motor Vehicles Act, 1988, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the Insured and excluding liability to any person being conveyed in or on the Motor Cycle unless such person is being conveyed by reason of or in pursuance of a contract of employment."

The above clause clearly indicates that the company Would not be liable for a death or injury arising out of and in the course of employment of such person by the insured except to the extent required under S. 85 of the Motor Vehicles Act, and that the liability to any person conveyed in or on the motor cycle is excluded unless such person is being conveyed by reason of or in pursuance of a contract of employment. When there is an express term in the policy excluding the liability for the death or injury caused to a person carried on the motor cycle unless he is being carried by reason of or in pursuance of a contract of employment, it cannot be contended that because the policy is comprehensive and no separate tariff is prescribed to cover the risk of a pillion rider it must be held that the policy covers such risks. It is only by virtue of the circular dt. 2-6-1986 the above clause is amended and re-worded as under:

"Death or bodily injury to any person including the person conveyed in or on the motor cycle provided such person is not carried for hire or reward."

The liability undertaken by the insurer to cover the risk of pillion rider also by virtue of the decision taken as above cannot be given retrospective effect unless such intention can be inferred from the relevant material. The circular makes it clear that a decision had then been taken to cover the liability to pillion passengers treating them as occupants. There is nothing in circular to indicate that retro spective effect has to be given to the new liability undertaken.

10. It is no doubt true that in the circular dt. 23-2-1978 which was issued in view of the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, it is stated that in order to make the intention clear that the comprehensive private car policy covers passenger liability, the Tariff Advisory Committee has decided to amend Cl. (1) of S. 2 private car comprehensive policies by incorporating certain words. That circular would appear to indicate that the comprehensive policies" issued in respect of a car was intended to cover the risk of passengers and that because of the decision of the Supreme Court the Tariff Advisory Committee decided to amend the wordings of the policy to make that intention clear. In the

comprehensive policy issued in respect of car S. 2 indicated that the company would indemnify the insured against all sums including claimant's costs and expenses which the insured becomes legally liable to pay in respect of a death or bodily injury to any person but except so far as is necessary to meet the requirements of S. 85 of the Motor Vehicles Act, 1988, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. There was no express stipulation excluding liability in respect of risk to occupants of the car but the Supreme Court, pointing out that under statute there was no liability to cover the risk to passengers of a private car, held that the policy would not cover the risk in passengers. It is therefore the circular was issued by amending S. 2 and making it clear that the company would indemnify the insured in the event of death or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward. But as already pointed out the policy in respect of a motor cycle was not similar to the comprehensive car policy and the terms of the policy clearly indicated that it does not cover the risk to pillion rider except under certain circumstances. As such, on the basis of the circular issued in respect of a comprehensive car policy it cannot be said that even before the issue of circular dt. 2-6-1986 the intendment in issuing a comprehensive policy in respect of a motor cycle was to cover the risk to pillion rider. As such the contention of the learned counsel for the owner of the motor cycle that the policy issued by the appellant must be taken to cover the risk to a pillion rider cannot be accepted.

11. The learned counsel for the claimants sought to rely on a decision of the Kerala High Court reported in *United India Insurance Co. Ltd. v. Appuputtan* 1995 (2) TAC 1 (Kar) to contend that the insurance company is liable to pay the compensation even in the case of a pillion rider. That decision cannot be of any help to the claimants as in that case accident took place on 2-6-1983.

12. In this case the deceased cannot be said to have been travelling on the pillion in pursuance of any contract on employment. The evidence would show that the deceased was waiting in a bus stand and when the third respondent went there he requested for a drop and proceeded on the pillion. As such the insurer cannot be made liable for the compensation payable on account of the death of that pillion rider.

13. Coming to the question of compensation the Tribunal has on the basis of the evidence on record found that the deceased was an L.I.C. agent and that he had earned commission of Rs. 1,766/- in 1981-82, Rs. 27,486.08 ps. in 1982-83 and Rs. 18,160.20 ps. in 1984-85 and that his insurance business was flourishing. It is seen that while in 1982-83 he had earned Rs. 27,486.08, during 1984-85 up to September, 1984 itself he had earned Rs. 18,160.20. As such the income of the deceased could not have been less than about Rs.2,000/- per month. The Tribunal has taken the loss of dependency as Rs. 500/- per month mainly on the fact basis that the wife of the deceased told in her evidence that the deceased

was spending Rs. 500/- for the maintenance of the family. While fixing the loss of dependency it would not be proper to take into consideration only the actual expenses incurred for the maintenance of the family. The income of the deceased should be taken into account and after giving deduction to his personal expenses the balance must be taken to be the amount loss by the dependents, as even if the deceased might have been spending little less than that he would have saved the same for utilisation of the family as special occasions business for performance of the marriages and other functions. That apart, in this case the deceased was actually spending for the maintenance of the family and his widow must have only given her estimation or the amount spent for the family. Considering the income of the deceased the loss of the dependency suffered by the claimants cannot be less than Rs. 1000/- per month or Rs. 12,000/- per annum. The deceased was aged about 33 years. The proper multiplier that should have been adopted is 13. Adopting that multiplier the total loss of dependency works out to Rs. 1,56,000/-. If the compensation towards loss to the estate of the deceased, loss of consorting, and funeral expenses which had been awarded at Rs. 11,500/- is added the total compensation comes to Rs. 1,68,500/-. The claimants have claimed only Rs. 1,50,000/-. As such the Tribunal ought to have awarded that amount to the claimants.

14. For the above reasons M.F.A. 1181/ 86 is allowed and M.F.A. 1114/86 is allowed in part and the judgment and award of the Tribunal are modified by fixing the compensation payable to the claimants at Rs. 1,50,000/- together with costs and interest at 6% per annum from the date of the petition and holding that the insurer is not liable to pay this amount and directing the owner and driver of the vehicle (namely respondents I and 6 before the Tribunal) to pay this amount.

15. Order accordingly.