
(2012) 07 KL CK 0347
In the High Court Of Kerala
Case No : M.A.C.A. No. 922 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Abdul Rehman and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2013) ACJ 1152

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Lal George, for the Appellant; K. Jaju Babu and Mr. George Cherian (Thiruvalla), for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—The insurance company is in appeal. As per the impugned award, the liability was fixed on the appellant insurance company in respect of the injury sustained by respondent-claimant who was travelling by a goods vehicle sharing the seat of the driver. According to appellant, the claimant who was an unauthorised passenger was sharing the seat of the driver contrary to the permit conditions and, therefore, the direction of the learned Tribunal is against the decision laid down by the Supreme Court in United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, . According to the appellant, the impugned award is very much contrary to the law laid down by the Supreme Court insofar as the respondent could not have been carried where there was only one seat which was intended for the driver alone and no additional premium was collected to cover risk of passengers.

2. The accident occurred on 7.7.2003 at 10.10 a.m. The claimant was the passenger in a goods autorickshaw insured with the appellant insurance company. It collided with another goods autorickshaw and the claimant sustained injuries. These are the admitted facts.

3. The learned Tribunal found that the accident occurred due to negligence of the

drivers of both the vehicles and the liability was apportioned in the ratio of 1:1. The respondent No. 2 was the driver of the vehicle by which the claimant was travelling (the vehicle which was insured with the appellant insurance company).

4. We have heard the learned counsel for the appellant insurance company, the learned counsel for respondent-claimant and the learned counsel for the respondent No. 7, insurer of the other vehicle involved in the accident. The learned counsel for the appellant insurance company mainly relied on Exhs. B1 and B2 to substantiate his case. Exh. B1 is the copy of the RC book which reveals that the goods vehicle insured with the appellant insurance company was single seater and the seat was intended for the driver only. Evidently and admittedly, too, the appellant was sharing the seat of the driver. The F.I.R. was lodged at about 11 a.m. on the next day on the basis of the information supplied by the passenger in the other goods vehicle involved in the accident. It is stated in the F.I. statement that the claimant in this case was a passenger. The learned counsel for the respondent-claimant would submit that the F.I. statement reveals that goods were loaded in the vehicle, but that alone is not sufficient to fasten the liability on the respondent insurance company. In the decision referred to above, the Apex Court observed as under (para 13):

If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is proved.

5. Learned counsel for the respondent-claimant relied on another Division Bench decision of this court rendered in *United India Insurance Company Ltd. Vs. Manoj and Others*, . The said decision cannot be quoted as an authority for the proposition that whenever a person travels by a goods autorickshaw in violation of the terms and conditions, insurance company should be saddled with the liability of paying the compensation reserving the right of recovery. In the decision referred to above, this court was dealing with a case where the owner was accompanying the goods. It is clear that there is absolutely no evidence on record to show that respondent-claimant was the owner of the goods which was being carried in the said autorickshaw. There is convincing evidence to show that the respondent-claimant was an unauthorised passenger. The appellant insurance company is not liable to indemnify the registered owner of the offending vehicle as the benefit of the policy issued by the appellant insurance company did not extend to unauthorised passengers in the goods vehicle. In the result, the appeal is allowed and the appellant is exonerated from paying the compensation. In this case, it was submitted by the learned counsel for the appellant that they have deposited their share and the same has been withdrawn on the deposit of a bank guarantee as per orders of this court. It will be open to the insurance company to enforce the bank guarantee and recover the amount paid.