(1992) 11 KAR CK 0053

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1936 of 1992

New India Assurance Co. Ltd. APPELLANT

Vs

Chandy Joseph and others RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Motor Vehicles (Amendment) Act, 1988 — Section 173
Motor Vehicles Act, 1939 — Section 95 (2)

Citation : (1994) 80 CompCas 778 : (1993) 1 KarLJ 326

Hon'ble Judges : M.M. Mirdhe, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : O. Mahesh, for the Appellant; C.K. Venkatesh for T. Umashanker and N.B. Bhat, for the Respondent

Judgement

M. Ramakrishna, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") is by the insurer challenging the correctness and the legality of the finding recorded by the Motor Accidents Claims Tribunal IX, Bangalore, on issue No. 4 in paragraph 13 of its judgment that the liability of the insurer cannot be limited to Rs. 50,000 and that the entire amount of the compensation awarded has to be paid by the insurer.

2. On 14th July, 1989, at about 7.30 p.m. while one Alex Joseph, son of respondents Nos. 1 and 2 was driving a two wheeler-scooter bearing No. CAR 4539 on Hosur Road, Bangalore, a motor car bearing No. 5727 came with a great speed and dashed against him resulting in bodily injuries. Subsequently, he died. Thereupon, the parents of the deceased the Claims Tribunal, Bangalore, with an application u/s 110D of the Motor Vehicles Act, seeking compensation for the death of their son.

3. The Tribunal examined PWs 1 and 2 and marked exhibits P-1 to P-7 on behalf of the claimants and the driver of the car was examined as R W 1.

4. The Tribunal after hearing learned counsel on both sides and after considering

the evidence on record, awarded compensation in a sum of Rs. 1,29,000 in all, with a direction that the entire amount has to be paid by the insurer.

5. Shri Mahesh, learned counsel for the appellant/insurer, who took us through the discussion on issue No. 4 from paragraphs 10 to 13, pointed out that, unfortunately, a copy of insurance policy having not been produced in the trial court, it had no benefit of looking at it to find out the extent of the liability of the insurer and that had a copy of the insurance policy been produced before the Tribunal, the finding on issue No. 4 would have been different.

6. However, the insurer has produced here a copy of the policy of insurance pertaining to the car in question, with an application I. A. II. No objection to allow that application. Accordingly, it is allowed.

7. Referring to the policy, Sri Mahesh argued that having regard to the entry found under B : ''Liability to public risk'' of the policy and the provisions of section 95(2) (b) (i) of the Motor Vehicles Act, 1939, the liability of the insurer had been limited to Rs. 50,000 and that though an argument to this effect was advanced before the court below, it failed to consider the same.

8. Section 95(2) (b) (i) reads :

"Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely :

(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..."

9. In view of the said provisions, Sri Mahesh submitted that had the court below considered the said provisions with reference to the policy of insurance, perhaps it would have been in a better position to appreciate the argument on behalf of the insurer. Therefore, he submitted that it was a fit case to allow the additional evidence along with I. A. II.

10. Sri N. B. Bhat, learned counsel appearing for respondents Nos. 1 and 2, however, submitted that even after the perusal of the copy of the insurance policy produced along with I. A. II as an additional evidence, it was not very clear whether the liability of the insurer has been limited in a case of this kind inasmuch as the deceased was not a passenger in the vehicle which caused the accident, but a rider of the scooter which was hit by the vehicle and such a person like the scooterist was not brought within the purview of section 95(2) (b) (i) extracted above. Therefore, his contention is that the liability of the insurer in this case is unlimited. But, however, he has not been able to pin-point the specific provisions, which cover a person like the deceased, fixing unlimited liability on the insurer. There is no provision other than section 95(2) to indicate the liability of the insurer as unlimited in respect of the person, other than the

passengers, found to have injured or dies in the accident involving the passenger vehicle.

11. Therefore, we will have to fall back upon the provisions of section 95(2).

12. The other contention of Sri Bhat is that in view of the enactment of the Motor Vehicles Act, 1988, which repealed the Motor Vehicles Act, 1939, with effect from July 1, 1989, the question of invoking the provisions of section 95(2) of the repealed Act to hold that the liability of the insurer is limited, does not arise. It is not possible to accede to this submission of Sri Bhat, in view of the proviso to sub-section (2) of section 147 of the repealing Act. It reads :

"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."

13. It is not in dispute that the policy covering the risk of the vehicle in question was in force as on July 1, 1989, on which date the repealing Act came into force. Therefore, the validity of the policy was extended up to four months from July 1, 1989, i.e., up to October 30, 1989, or till its expiry on November 16, 1989, whichever is earlier, in view of the said proviso. So, the earlier date between the two being October 30, 1989, till then the validity of the policy was extended by force of law, and the accident having taken place well within that date, i.e., on July 14, 1989, the liability of the insurer has to be decided by attracting the provisions of section 95(2) (b) of the repealed Act with reference to the policy in question and not under the provisions of the repealing Act. Therefore, applying the provisions of sub-clause (i) of clause (b) of sub-section (2) of section 95 of the repealed Act, we hold that the liability of the insurer is limited to Rs. 50,000 each.

14. Viewed from these circumstances, we are clearly of the view that the finding recorded by the Tribunal on issue No. 4 holding that the liability of the insurer is unlimited and therefore he must make good the entire amount of Rs. 1,29,000 cannot be sustained.

15. Therefore, for the reasons stated above, we allow the appeal and modify the judgment and award under appeal as follows :

16. The liability of the insurer/appellant is limited to Rs. 50,000 per claim. The insurer is hereby directed to make good in each case Rs. 50,000 out of the compensation awarded along with interest as awarded by the Tribunal. The rest of the compensation has to be paid by the owner of the vehicle.

17. Pursuant to the direction of this court, the appellant-insurer has deposited Rs. 50,000 in this court, exclusive of interest thereon. But Sri Mahesh now submits that interest would be paid soon. Therefore, we direct the appellant to pay interest at the rate awarded by the Tribunal on Rs. 50,000 from the date of petition till deposit of Rs. 50,000 in this court.

18. Sri Bhat submit that the Claimants may be permitted to withdraw the amount in deposit. Permission granted.

v.

