

(1992) 11 KAR CK 0014
In the Karnataka High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Chandy Joseph and Others

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 D, 173, 95 (2) (b) (i)

Citation : (1994) 2 ACC 82 : (1994) 1 ACC 406

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

Bench : Division Bench

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 Accident Claims Tribunal-IX, Bangalore, in 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 s/o respondents 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 approached the Claims Tribunal, Bangalore, with an application u/s 110-D of the Motor Vehicles Act, seeking compensation for the death of their son.

3. The Tribunal examined P.Ws. 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 the 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. Sri 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 insurance policy, been produced before the Tribunal, the finding on issue No. 4 would have been different.

6. However, the insurer had practiced 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 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 produced along with I.A. II.

10. Sri. N.B. Bhat, learned Counsel appearing for Respondents 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 un-limited 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 been injured or died 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 w.e.f. 1.7.1989, 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 repealed 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.

It is not in dispute that the policy covering the risk of the vehicle in question was in force as on 1.7.1989 on which date the repealing Act came into force. Therefore, the validity of the policy was extended upto four months from 1.7.1989 i.e. upto 30.10.1989 or till its expiry on 16.11.1989 whichever is earlier, in view of the said Proviso. So, the earlier date between the two being 30.10.89, 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 14.7.1989, the liability of the insurer has to be decided by attracting the provisions of Section 95(2) 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 Rupees 50,000/- each.

13. 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 Rs. 1,29,000 cannot be sustained.

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

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.

15. Pursuant to the direction of this Court, the appellant-insurer had 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.

16. Sri Bhat submits that the claimants may be permitted to withdraw the amount in deposit. Permission granted.