(2011) 01 KL CK 0040

In the High Court Of Kerala

Case No : M.A.C.A. No. 2617 of 2010

New India Assurance Co. Ltd. — APPELLANT

Vs

Jameela and Others — RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 166, 173

Citation : (2011) 2 ILR (Ker) 285 : (2011) 2 KLJ 562 : (2011) 3 TAC 40

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Lal George, for the Appellant;

Final Decision : Dismissed

Judgement

P.Q. Barkath Ali, J.—The short question, which arise for consideration in this appeal u/s 173 of the Motor Vehicles Act by the Insurance Company, is whether the owner of goods carried in a goods carriage who has accompanied the goods would come within the purview of Section 147(1) of the Motor Vehicles Act, if goods as such were not carried in the vehicle at the time of the accident.

2. Appellant is the 3rd Respondent Insurance Company in O.P.(MV) No. 95 of 2006 on the file of the Motor Accidents Claims Tribunal, Ottappalam. The claimants in the O.P. who are Respondents 1 to 4 in this appeal filed the O.P. before the Tribunal claiming a compensation of Rs. 7,31,000 for the loss caused to them on account of the death of one Shajahan in a motor accident that happened on June 26, 2005 at about 11.30 a.m. at Kalladikkode, Chungam within the jurisdiction of Mannarkadu Police Station. Claimants are wife and three minor children of the deceased. The parents of the deceased were shown as Respondents 4 and 5 in the O.P.

3. The accident happened while the deceased was travelling in a tempo van bearing Registration No. KL-9M-3150 driven by the 1st Respondent in the O.P. from Perumbavoor to Machanthodu after unloading wooden logs. When they

reached at Kalladikkode while giving side to a vehicle coming from the opposite direction, the driver lost control and the tempo van dashed against a tree standing on the side of the road. The deceased sustained serious injuries and he succumbed to the injuries while undergoing treatment in the hospital. Alleging negligence against the 1st Respondent driver of the tempo van, the claimants filed the O.P. before the Tribunal u/s 166 of the Motor Vehicles Act claiming a compensation of Rs. 7,31,000.

4. Respondents 1 and 2 in the O.P., the driver and owner of the offending tempo van, and Respondents 4 and 5 in the O.P., the parents of the deceased, remained absent before the Tribunal. The 3rd Respondent in the O.P. i.e., Appellant herein who is the insurer of the offending tempo van filed a written statement admitting the policy but contended that as the deceased was a gratuitous passenger in a goods vehicle and as no goods were carried in the vehicle when the accident took place, his risk is not covered by the insurance policy of the offending vehicle.

5. P.Ws. 1 and 2 were examined and Exts.A-1 to A-12 were marked on the side of the claimants. Ext.B-1 was marked on the side of the Respondents. On an appreciation of evidence, the Tribunal found that the accident occurred due to negligence of the 1st Respondent driver of the offending tempo van and awarded a compensation of Rs. 3,93,500 with interest at 7% per annum from the date of petition till realization. The Tribunal also found that as the deceased was the owner of the goods carried in the vehicle his risk was also covered by the insurance policy in respect of the said vehicle. The 3rd Respondent in the O.P. has come up in appeal challenging the said finding of the Tribunal and also the quantum of compensation awarded by the Tribunal.

6. The following points arise for consideration:

(1) Whether the deceased can be considered as an owner of the goods carried in the vehicle as provided under sub Clause (i) of Clause (b) of section 147 of the Act and if so whether his risk is covered by the policy issued in respect of the offending vehicle?

(2) Whether the compensation awarded is excessive ?

7. Point No. 1.--Relying on a decision of the Apex Court in United India Insurance Co. Ltd. v. Suresh 2008 (4) KLT 552 (S.C.) the learned Counsel for the Appellant argued that at the time of the accident no goods were carried in the vehicle and that therefore the deceased cannot be considered as an owner of the goods carried in the vehicle as provided u/s 147(1)(b)(i) of the Motor Vehicles Act and that therefore his risk is not covered by the policy issued in respect of the offending vehicle. We find no merit in the above contention. In the above decision itself the Apex Court has extracted the following observation of the High Court:

According to us, the language of the amended provision does not show that the owner or the representative must accompany the goods or his representative who hires the vehicle travels in the hired vehicle from the place of hiring to the place where the goods are to be loaded into the vehicle and then proceeds to travel along with the goods. It is also common that after unloading the goods such passengers travel in the same vehicle to the place from where they commenced journey. The passenger does so and is allowed to do so in his capacity as the owner of the goods or his representative who has hired the vehicle for transporting goods. The amended provision makes it explicitly clear that the word ''carried'' qualifies the owner of goods or his representative and not the goods carried. If goods are found inside the vehicle at the time of the accident, it is a clinching circumstance to establish that the passenger who claims to be the owner of goods or the owner''s representative was travelling in that capacity. Chances of passengers or the insured raising false claims in this regard cannot be safe method to ascertain the intention of the Legislature. False claims can be disproved by the insurer by adducing materials and evidence and also by raising appropriate contentions. In our view, such issues are matters of evidence and will not stand scrutiny while construing a beneficial provision intended to compensate the loss caused to innocent victims of motor accidents. The party who claims that the person who died or sustained injury as the owner of goods or the representative of the owner of the goods shall discharge the burden cast on him. Merely for the reason that the benefit granted will be misused, it will not be proper to give a narrow interpretation to the above provision. We, therefore, hold that the owner or the authorized representative need not invariably be shown to accompany the goods at the time the goods carriage meets with accident causing injury to or resulting in the death of the passenger who is either the owner of the goods or the authorized representative of the owner of the goods.

8. Relying on the principles laid down in the above decision a Division Bench of this Court in New India Assurance Co. Ltd. Vs. Alekutty Antony, and a Single Judge of this Court in United India Insurance Co. Ltd. v. Velayudhan (2010) (4) KLT 834 have held that a person continues to be the owner of the goods or representative of owner of goods even while returning after unloading the goods.

9. It is clear from the principles laid down in the above decisions that the risk of the person who died or sustained injury as the owner of the goods or the representative of the owner of goods is covered the insurance policy issued u/s 147 of the Motor Vehicles Act and that a person continues to be the owner of the goods or representative of owner of goods even while returning after unloading goods. The finding of the Tribunal on this point is confirmed.

10. The next question for consideration whether it is proved that the deceased was returning in the offending tempo van after unloading the goods. P.W. 1 the widow testified that her husband transported wooden logs to Ollur and was returning in the same vehicle while the accident occurred. Her evidence on this aspect is supported by Exts.A-7 and A-9 and the evidence of P.W. 2 the employer of the deceased. P.W. 2 would say that on the previous day of the incident the

deceased had proceeded to Perumbavoor to unload wooden logs. The learned Counsel for the 3rd Respondent in the O.P. was not able to shake his evidence in cross-examination. Further Ext. A-7 agreement dated March 25, 2005 shows that deceased had taken the right for slaughter tapping in a rubber estate. Ext. A-9 is the receipt issued from Anna Weigh Bridge, Kalady which shows that on June 25,2005 at about 4 p.m. the offending vehicle had come there for weighment. It is clear from the above evidence that the deceased was returning in the tempo van after unloading the wooden logs. That being so, his risk is covered by policy issued in respect of the offending vehicle in the light of the principles laid down in the above decisions. Finding of the Tribunal on this point is confirmed.

11. In the light of the above finding, the appeal is liable to be dismissed.

The appeal is accordingly dismissed.

