

(1995) 08 KAR CK 0005
In the Karnataka High Court
Case No : M.F.A. No. 2753 of 1987

New India Assurance Co. Ltd.

APPELLANT

Vs

K. Rajanna and Others

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1995) ACJ 1015

Hon'ble Judges : S. Venkataraman, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; K.T. Gurudeva Prasad, for the Respondent

Judgement

S. Venkataraman, J.—In this appeal the insurer has questioned the correctness of the judgment and award of the Tribunal fastening the liability to pay the compensation on the insurer.

2. The claimant-first respondent sustained injuries in an accident when he was travelling on the pillion of the motor cycle belonging to the second respondent and driven by the third respondent on 17.1.1982 at 11.15 p.m. The respondent Nos. 2 and 3 did not contest the claim, only the appellant insurer contested the claim. The Tribunal having found that the accident took place due to the rash or negligent driving of the motor cycle has awarded a compensation of Rs. 50,000/- towards injuries, pain and suffering, Rs. 2,000/- towards expenses, Rs. 1,000/- towards future expenses, Rs. 6,732.42 towards loss of earnings during the period of treatment and Rs. 20,000/- towards loss of future income, in all a sum of Rs. 81,232/-. The Tribunal has further held that as under the policy the seating capacity of the vehicle had been shown as 1+1, the policy covers the risk of even the pillion rider and has, therefore, directed the insurer to pay the compensation in the first instance.

3. The learned counsel for the appellant sought to contend that as the petitioner (the first respondent) had admitted in his evidence that the third respondent,

who was driving the motor cycle, had purchased the vehicle, the policy has lapsed and that as such the insurer could not have been made liable. The appellant has nowhere taken up a plea that the vehicle had been transferred by the second respondent who was the insured in favour of the third respondent and that as such their policy has lapsed. Merely because in the course of the cross-examination of the petitioner it is brought out that the third respondent had purchased the vehicle, the appellant cannot seek to avoid its liability under the terms of the policy. That apart, the petitioner, who was examined in court long after the accident, has stated that he does not know when the third respondent purchased the vehicle. As such there is no clear material on record to show that the second respondent had sold the vehicle to third respondent even before the accident.

4. The learned counsel for the appellant next strenuously contended that the policy is an Act policy and that the risk of the pillion rider is not covered under the terms of the policy. The reasoning given by the Tribunal for holding that the policy covers the risk of the passenger also does not appear to be correct. He has pointed out that in the policy under the column "carrying capacity" it is mentioned as two and that this necessarily means that the policy covers even the risk of the pillion rider. The Tribunal has not taken note of Section II of the terms of the policy. Section II-1 (a) 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 Section 95 of the Motor Vehicles Act, 1939, 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 pay 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 provision shows that under certain circumstances the insurer is liable to cover the risk of persons carried on the pillion also. An Act policy does not cover the risk of a pillion rider of a motor cycle has been made clear by this court in *New India Assurance Co. Ltd. v. Mayappa Bhima Nanappagol* M.F.A. No. 1709 of 1979. It may be mentioned here that that was the position prevailing before a clarification was issued on 2.6.1986 from which date even the pillion rider's risk is covered under the comprehensive policy. In the present case, policy issued is an Act policy and as such merely because the carrying capacity is shown as two, the Tribunal could not have straightaway made the insurer liable. However, on the facts of this case a question arises as to whether the proviso in Section II-1 (a) is attracted thereby making the insurer liable.

5. The learned counsel for the appellant contended that the petitioner has

nowhere pleaded that he was travelling on the pillion in pursuance of any contract of employment or that he was an employee of the owner of the vehicle. It is no doubt true that no such specific plea is taken, but it is seen that the appellant has itself elicited in the cross-examination of the petitioner that on that night the third respondent asked him to accompany him as he wanted to bring medicine for his wife, that though he refused to go the third respondent pleaded that he was going alone and wanted him to accompany and that as such he accompanied the third respondent. It may be noted that the third respondent had to go from the village to fetch medicine at 11.30 p.m. Obviously he wanted someone to accompany him as he was not prepared to go alone in that night. It is on account of that request of third respondent the petitioner accompanied the third respondent on the pillion. As this evidence has been elicited by the appellant in the cross-examination, that evidence cannot be ignored.

6. This court in M.F.A. Nos. 289 and 483 of 1979 while interpreting the expression "in pursuance of contract of employment" has held that that even where the pillion rider was taken for the purpose of showing a house that would be a case of the pillion rider going on the motor cycle in pursuance of contract of employment. The expression "contract of employment" appearing in Section II-1 (a) of the terms and conditions of the policy have to be interpreted in a broad sense so as to include all cases where the pillion rider accompanies the driver for some work of the driver and not on his own. In the present case also the petitioner has accompanied the third respondent on the pillion at the instance of the third respondent and to provide him company, while travelling in the night to fetch medicine. Hence it can be said that the petitioner was travelling on the pillion in pursuance of a contract of employment. In this view of the matter the order of the Tribunal holding the insurer liable to pay the compensation will have to be upheld.

7. Lastly, the learned counsel for the appellant contended that the Tribunal has awarded more than what the petitioner himself has sought and even though there was no claim for loss of future earnings. There is some force in this contention. The Tribunal has awarded Rs. 20,000/- towards loss of future earnings though there was no clear evidence about the petitioner not being able to carry on the work which he was doing prior to the accident. In fact the petitioner himself had claimed a total sum of Rs. 60,000/- under the heads general damages, pain and suffering, mental agony, shock and loss of amenities and another sum of Rs. 5,000/- towards expenses. He had nowhere stated that on account of the injuries he is unable to carry on his avocation or that his future earnings are reduced. As such the award of Rs. 20,000/- towards loss of future earnings cannot be upheld. To this extent the judgment and award of the Tribunal will have to be modified.

8. The Tribunal has awarded interest at 12 per cent per annum. No special reasons are given for awarding interest at this rate. However, on account of the appeal filed by the insurance company the claimant-first respondent had not

realised any compensation till now and already 13 years have elapsed after he filed the claim petition. In the circumstances, it would be just and proper to award 9 per cent interest per annum.

9. For the above reasons this appeal is allowed in part and the compensation payable to the first respondent-claimant is fixed at Rs. 61,232/- together with costs and interest at 9 per cent per annum from the date of the petition. The parties to bear their own costs in this appeal.