

(1997) 12 KAR CK 0048

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 421 of 1989

New India Assurance Company Limited, Bangalore

APPELLANT

Vs

Vithal and Another

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 95 (2) (b) (ii)

Citation : (1999) ACJ 561 : (1998) 4 KarLJ 268

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri K.S. Suryanarayana Rao, for the Appellant; Sri G.G. Chagashetty, for the Respondent

Judgement

1. Heard the learned Counsel for the appellant Sri K. Suryanarayana Rao and Sri G.G. Chagashetty, learned Counsel for the respondents. This appeal arises from the judgment and award given by the Tribunal in MVC Case No. 98 of 1997, which has been decided by the Tribunal along with other MVC cases. There is no dispute about the amount of compensation assessed nor is there any dispute about the cause of accident. On behalf of the Insurance Company it has been contended that the Tribunal has erred in law in holding that the liability of the Insurance Company was in full with reference to the amount of compensation awarded and in directing the appellant-Insurer to pay the balance amount of compensation, though Rs. 15,000/- has already been paid out, of the sum of Rs. 25,000/- awarded. The learned Counsel contended that the Tribunal erred in holding that the liability of the Insurance Company to pay the compensation amount is 100%. In support of this contention the appellant's learned Counsel sought to rely on the decision of the Supreme Court in the case of Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, . Without going into the details of his arguments suffice it is to say that this point is concluded and covered by the latest decision of the Supreme Court in the case of M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, , and the decision of their Lordships in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai

and others, . In the case of M.K. Kunhi Mohammed, supra, while dealing with the case of the Allahabad High Court their Lordships of the Supreme Court observed that "The High Court of Allahabad in *New India Assurance Company Limited v Mahmood Ahmad*, the High Court of Bombay in *Shivahari Rama Tilojt v Kashi Vishnu Agarwadekar* , and the High Court of Patna in *National Insurance Company Limited v Shanim Ahmad*, and in *Tara Pada Roy v Dwijendra Nath Sen*, have overlooked the cumulative effect of sub-clauses (1), (2) and (3) and of sub-clause (4) of Section 95(2)(b)(ii) of the Act. They have failed to give effect to Section 95(2)(b)(ii)(4) of the Act. We are of the view that these decisions do not lay down the correct view. We may, however, state here that in *Noor Mohammad and Another Vs. Smt. Phoola Rani and Others*, and in *Raghib Nasim v Naseem Ahmed*, two Division Benches of the Allahabad High Court have construed the provision in question as we have done in this case". Thus it appears that the decision in the case of Mahmood Ahmad, supra, on which the Tribunal has placed reliance along with other decisions of Bombay and Patna High Court have been held to be laying down incorrect law. The Supreme Court has approved the subsequent decision of the Allahabad High Court in *Noor Mohammad's* case, supra, in which the law has been laid down by the Division Bench. After referring to *P.B. Kader's* case, their approval in the decision in the case of *Jadavji Keshauji Modi*, supra, their Lordships of the Supreme Court took note of the amendment made in Section 95 by the Act 47 of 1982. Their Lordships observed in paragraph 8 as under:-

"8. These observations were quoted with approval by this Court in the course of its judgment in *Jadavji Keshavji Modi's* case, supra and while doing so the Court observed that the above observations were still languishing in the cold storage of pious wishes. Immediately after the decision in the above case, Parliament took steps to amend sub-clause (ii) of clause (b) of Section 95(2) of the Act 47 of 1982".

After the said amendment sub-clause (ii) of clause (b) of Section 95(2) of the Act reads thus:

"95(2)(b). Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason or in pursuance of a contract of employment.

XXXXXXXXX (ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger. . . . "

In para 9 their Lordships observed "As the law stands today the Insurer is liable to pay upto Rs. 15,000/- in respect of death of any passenger or any injury caused to him. In the statement of objections it is stated that the liability of the Insurance Company with reference to a passenger involved in an accident in a public service vehicle was fixed at Rs. 15,000/-. After the above amendment it was intended to increase the liability of the insurer, instead of Rs. 10,000/- in case of each individual passenger where the vehicle was a motor cab and Rs. 5,000/- for each individual passenger in other cases which were the limits in

force immediately prior to the said amendment. The liability in respect of an individual is now raised to Rs. 15,000/-. This clearly demonstrates the Parliament never intended the aggregate liability of the insurer mentioned in sub-clauses (1), (2) and (3) of Section 95(2)(b)(ii) of the Act would be liability of the insurer even when one passenger has died or suffered injury on account of the accident. Such liability always further limited by sub-clause (4) of Section 95(2)(b)(ii) of the Act". In the subsequent decision in the case of Smt. Shanti Bai, *supra*, their Lordships of Supreme Court considered the scheme of Section 95 of Motor Vehicles Act, 1939 and the earlier cases again held the liability (statutory) of insurer to be limited to Rs. 15,000/- (Rupees Fifteen Thousand) and observed in para 9 of the report which reads as under:-

"9. In the present case, the premium which has been paid is at the rate of Rs. 12/- per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant-Company and respondent 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of *National Insurance Company Limited v Jugal Kishore*, comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of *Kunhi Mohammed*, *supra*. The appellant-Company is, therefore, entitled to succeed to the extent that it has been directed to pay to respondents 1 to 3 any amount in excess of Rs. 15,000/-".

With these observations the Supreme Court allowed the appeal and observed that the liability of the Insurance Company is limited to Rs. 15,000/-, but does not affect the liability of the owner of the vehicle. In the present case the premium has been paid with reference to 49 passengers is shown to be Rs. 588/-, i.e., Rs. 127- per passenger. In this view of the matter, in my opinion the liability of the Insurance Company has been limited to the extent of Rs. 15,000/- only. The Tribunal as such erred in holding that the Insurance Company is liable to pay entire compensation. In fact, the liability of the Company is limited to Rs. 15,000/- only, but that does not exonerate the owner of the vehicle from his liability to pay the balance. The balance of compensation may be realised by the 1st respondent. The claimant may realise the balance of Rs. 10,000/- from the 2nd respondent, the owner of the vehicle.

2. With these observations this appeal is allowed and the award is modified indicating the liability of insurer to Rs. 15,000/- only and balance of

compensation is to be paid and held to be payable by owner of vehicle. There will be no order as to costs.