
(1983) 09 KAR CK 0022
In the Karnataka High Court

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Shivana Gouda and Others	RESPONDENT

Date of Decision : 02-09-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 95 (a), 95 (b) (i)

Citation : (1984) 2 ACC 522

Hon'ble Judges : S.R. Rajasekhara Murthy, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

Jagannatha Shetty, J.—The Oriental Fire and General Insurance Company Ltd., has preferred this appeal against the judgment and award dated April 5, 1977 rendered by the Motor Accidents Claims Tribunal, Dharwar in Misc. (MVC) 16/1975.

2. Mr. M.R. Patil was the elected Chairman of the Hubli Co-operative Cotton Sales Society Ltd., Hubli (the "Society"). He was entitled to a Society's car for his official work. On August 24, 1974 he was travelling from Hubli to Bangalore on Poona-Bangalore road in the Society's car which was driven by the driver of the Society. The car met with an accident by dashing against a heap of rubbles collected at the road side for the purpose of road repairs Mr. Patil sustained grievous injuries and died before he was taken to the hospital. He left behind 4 sons and two daughters. Two of his sons filed a petition before the Tribunal, claiming compensation of Rs. 50,000/- on behalf of all the children alleging that the accident was due to the rash and negligent driving of the car.

3. The claim petition was resisted by the Insurance Company and the society on the ground that there was no negligence on the part of the car driver and the accident had occurred due to mechanical defects in the vehicle. The Insurance Company also took up the contention that it was, at any rate, not liable to indemnify the society since there was no relationship of Master and Servant between Mr. M.R. Patil and the Society.

4. The Tribunal held that the accident was the result of rash and negligent driving of the car as alleged by the claimants, Mr. M.R. Patil was travelling in the car for the work of the Society and he was therefore, a third party so far as the Insurance contract was concerned. The terms of the policy were comprehensive enough to include the compensation arising out of the death of any person including a passenger travelling in the car for which the owner of the car and the Insurance Company would be liable.

5. It is not necessary for us to consider the evidence adduced in this case as to the rash and negligent driving of the vehicle since the appeal is only by the Insurance Company and the contention raised, as it ought to be, is only as to the liability to indemnify the Society.

6. Counsel on both sides before us do not and indeed could not support the view taken by the Tribunal as to the right of Mr. M.R. Patil under the policy, in view of the decision of the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, In that case, the Supreme Court while examining the scope of Section 95(a) and 95(b)(i) of the Motor Vehicles Act has observed at page 1746:

Section 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the Insurance Company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to Sub-section which provides that a policy shall not be required;" (ii) except 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, to cover liability in respect of the death of or bodily injury to persons being carried in or upon entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to the passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and that insurance company held not liable under the requirements of the Motor Vehicles Act.

7. The tribunal, in the instant case, in order to reach the conclusion that under the policy, the Insurance Company would be liable in case of death or injury to passengers, has relied upon Section-II in the Policy. The said Section is found extracted at page 1747 in the judgment of the Supreme Court and we set out

the same below:

1. The company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs 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.

We think that the Tribunal was not justified in relying upon the above Section to hold that the insurance company would be liable to indemnify the legal liability to any passenger u/s 95 of the Motor Vehicles Act. The scope of that Section has been summarised by the Supreme Court in the above said case as follows:

The legal liability is restricted to Clause 1(a) which states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirement of Section 95 of the Motor Vehicles Act 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. Clause 1 and 1(a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, would indicate that the liability restricted to the liability arising out of the statutory requirements u/s 95. The second part of Clause 1(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of the Sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are not covered u/s 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under Clauses 1 and 1(a) is the risk required to be covered u/s 95 of the Motor Vehicles Act.

8. It is clear from the above pronouncement that any passenger travelling in the car cannot be regarded as a third party and there is no statutory liability covering the risk to such persons. The risk to such persons or passengers who are not carried for hire or reward is not required to be insured u/s 95. Of course, it will open to the owner of the vehicle to cover even such risk by payment of additional tariff. That would be a different matter. We are not concerned with that with the restricted liability arising u/s 95 and that liability without anything more will not cover the risk to passengers who are not carried for hire or reward.

9 There is another category of passengers whose risk is covered by the statutory liability u/s 95. They are passengers carried by reason of or in pursuance of a contract of employment. Mr. Patil, learned Counsel for the claimants, urged that urged that Mr. M.R. Patil could be considered as a passenger of that category. He relied upon Clause (ii) of the proviso of Section 95(1). For immediate reference

the relevant provisions are set out below:

Clause (ii) under the proviso to Section 95(1):

Except 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, to cover liability in respect of the death of or bodily injury to persons being carried in or upon entering or mounting, or alighting from the vehicle at the time or the occurrence of the event out of which a claim arises or....

Section 95(2):

Subject to the proviso to Sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely....

(a) x x x x x (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) x x x (ii) In respect of passengers....

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;.

(2) x x x(3) x x x (4) Subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;.

x x x

10. From these provisions, it will be seen that if Mr. M.R. Patil, was a passenger carried for hire or reward or by reason of or in pursuance of a contract of employment, his risk would be statutorily covered u/s 95(2). In other words, the act policy covers the risk to passengers carried for hire or reward, or the passengers carried by reason of or in pursuance of a contract of employment. In respect of these two categories of passengers, there need not be any special endorsement in the policy or there need not be any additional payment of premium. Section 95(2)(b) itself provides for compensation for risk to such passengers.

11. Mr. Acharya, learned Counsel for the appellant, does not and induced could not dispute this proposition of law. This view also finds support from the decision of the Bombay High Court in *Gopibai Ghanshamdas Advani and Ors. v. M/s. Food Corporation of India, Bombay and Ors.* 1983 ACS 340, and the decision of the Gujarat High Court in *United India General Insurance Co. Ltd. Vs. Shantaben Jerambhai and Others*, . In the first case the deceased had gone on official duty and was returning back in the car provided by his employer. The car fell into a canal resulting in his death. The Bombay High Court held that the deceased was a passenger in the car and his risk was covered statutorily u/s 95(1). It may be noted that there was no dispute in that case that the deceased was an employee

of the owner of the car and he was a passenger carried by reason of or in pursuance of a contract of employment. Similar was the position in the case decided by Gujarat High Court. Therein the deceased was travelling in the vehicle in connection with business relating to his employment, and he was also travelling by reason of and in pursuance of a contract of employment.

12. Likewise, if Mr. M.R. Patil was a passenger travelling in the Society's car by reason of or in pursuance of contract of employment then, there is no difficulty for us to sustain the award made by the Tribunal against the insurance company. Mr. M.R. Patil was undoubtedly a passenger travelling in the car belonging to the Society. Mr. Acharya does not dispute that, but he urged that Mr. M.R. Patil was the elected Chairman of the Society and the Chairman of a Society can never be considered as a person under contract of employment. The contract of employment, according to the learned Counsel must give rise to the relationship of Master and Servant and there cannot be any such relationship as between the society and its elected Chairman.

13. There is a considerable force in the submission of Mr. Acharya. We cannot think of any employment without a Master who employs, and a servant who is willing to be employed. The agreement as to the terms of employment agreed upon between the Master and Servant or the employer and employee can only be termed as a contract of employment. In *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, the Supreme Court, while examining the scope of the word "employment" under the Factories Act, observed at Page 391:

The concept of employment involves three ingredients [1] employer [2] employee and [3] the contract of employment. The employer is one who employs i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision.

It seems to us, therefore, that the expression "Contract of employment used in Clause (2) of Section 95 [1] [b] cannot have a different contract. It pre-supposes the existence of a relationship of Master and Servant as between the parties. The employee must be travelling as a passenger in the car belonging to his master by reason of and in pursuance of his contract of employment. If there is no such contract of employment or if there is no such relationship of Master and Servant, the employee who travels in his Master's vehicle cannot hold the insurance company liable without any special endorsement in the policy.

14. Mr. Patil, learned Counsel for the claimants, however, made an attempt to show that the Chairman, although elected, could be considered as an Officer of the Society and in that sense he could be regarded as an employee of the society like all other officers of the society. He relied upon Clause [2][g] of the Karnataka Co-operative Societies Act, 1959 to show that "Officer" means the President, Vice-President, Chairman, Vice-Chairman, Secretary, Manager, etc. empowered

to exercise any power or perform any function in regard to the business of co operative society, or any person empowered under the Rules or Bye laws to give directions in regard to the business of a co-operative society.

15. The Chairman may be an officer for statutory purpose and that admits of no doubt. But, he cannot certainly be an employee of the Society. Nor the Society can be said to be his Master. It would be illogical and improper to call the Chairman as an Employee of the Society. The Chairman, or as a matter of fact, any other elected representative of a body or authority, does not occupy the office under a contract of employment. We are not unconscious of the fact that this interpretation would keep the risk to elect persons or representatives outside the Insurance cover of the vehicle provided for their office use unless such risk is specially covered by payment of additional premium. But we cannot help such cases as the law is clearly against them.

16. It is not the case of the claimants in this case that there is a special term in the insurance policy to cover the risk of the passenger like Mr. M.R. Patil. The insurance company, therefore, cannot be held liable to pay the award amount.

17. This takes us to the cross-objection filed by the claimants. They have in all claimed Rs. 15,000/-. The Tribunal has awarded Rs. 7,000/- towards loss to the estate and Rs. 5,000/- towards loss of dependency. It has estimated this compensation in broad terms having regard to the age of the deceased and the independent occupations of his children. Mr. M.R. Patil was drawing an honorarium of Rs. 700/- per month in addition to other perquisites. Although he was 72 years, he was keeping good health and taking active part in public life. He could have lived for some more years. Having regard to all the circumstances of the case, it seems to us that it is not unreasonable to award compensation of Rs. 15,000/- which has been claimed in the cross-objection.

18. In the result, the appeal is allowed. The award as against the Insurance Company is set aside. The Cross-objection is also allowed. The claimants and Respondents 4 to 8 in the Tribunal below are entitled to compensation of Rs. 15,000/- with interest at 6% from the date of petition till payment. This amount shall be recovered by the claimants from respondents 3 & 4.

19. The parties shall pay and bear their own costs.