

(1983) 09 KAR CK 0009
In the Karnataka High Court

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

Date of Decision : 02-09-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95 (1) (a), 95 (2)

Citation : (1984) ACJ 786 : (1990) 68 CompCas 267

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

Bench : Division Bench

Advocate : B.V. Acharya, for the Appellant; S.R. Bennurmath, for the Respondent

Judgement

1. The oriental Fire and General Insurance Co. Ltd. has preferred this appeal against the judgment and award dated April 5, 1974, rendered by the Motor Accidents Claims Tribunal, Dharwar, in Miscellaneous (MVC) 16 of 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 the society's car for his official work. On August 24, 1974, he³ was travelling from Hubli to Bangalore on Poona-Bangalore road in the society's car and by dashing against a heap of rubbles collected at the roadside 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 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 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. Counsels on both sides before us do not and indeed could not support the view taken by the Tribunal as to the risk to Mr. M.R. Patil under the policy, in view of the decision of the Supreme Court in *Pushabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. P. Ltd.* AIR 1977 SC 1935. In that case, the Supreme Court, while examining the scope of sections 95(1)(a) and 95(1)(b)(i) of the Motor Vehicles Act, has observed at page 1746:

"Section 95(1)(a) and 95(1)(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 persons against any liability which may be incurred by him in respect of death of, 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 negated as the insurance cover is not available to the passengers which is made clear by the proviso to the 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 or 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 a 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 the 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 of, or injury to, passenger, 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 claimants' 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."

8. We think that the Tribunal was not justified in relying upon the above section to hold that the insurance company would but liable to indemnify the legal liability to any passenger u/s 95 of the Motor Vehicles Act. The scope of that section has been summarized by the Supreme Court in the above-said case as follows (p.1747):

"The legal liability is restricted to clause 1 (a) which states that the indemnify 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 requirements 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 . Clauses 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 is 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 this 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 clause 1 and 1(a) is the risk required to be covered u/s 95 of the Motor Vehicles Act."

9. 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 risks 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 be open to the owner of the vehicle to cover even such risk by payment of additional tariff. That would be different matter. We are not concerned with that. We are only concerned 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.

10. 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 Mr. M.R.Patil could be considered as a passenger of that category. He relied upon clause (ii) of the proviso to section 95(1). For

immediate reference, the relevant provisions are set out below:

11. 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 or entering or mounting or alighting from the vehicle at the time of the occurrence of event out of which a claim arises, or....."

12. Section 95 (2):

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

(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,

(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 ;.....

(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"

13. From these provisions, it will be seen that if Mr. M.R.Patil was a passenger carried for hire or reward or by the reason of or in pursuance of a contract of employment, his risk would be statutorily covered u/s 95(1). 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.

14. Mr. Acharya, learned counsel for the appellant, does not and indeed 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 Others Vs. Food Corporation of India and Others*, In the first case, the deceased had gone on official duty and was returning 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 the 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.

15. Likewise, if Mr. M.R.Patil was a passenger travelling in the society's car by reason of or in pursuance of a contract of employment, then there is no difficulty for us to sustain the award made by the Tribunal against the insurance company. 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.

16. There is 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 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 the employment involves three ingredients (1) employer, (2) employee and (3) the contract of employment. The employer is one who employs, i.e., on 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."

17. It seems to us, therefore, that the expression "contract of employment" used in clause (2) of section 95(1)(b) cannot have a different connotation. It presupposes 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.

18. 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 cl.(2)(g) of the Karnataka Co-operative Societies Act, 1959, to show that "Officer" means the President, Vice-President, Chairman, Vice-Chairman, Secretary, Manager, Treasurer, etc., empowered to exercise any power or perform any function in regard to the business of the co-operative society, or any person empowered under the rules

or bye-laws to give direction in regard to the business of the co-operative society.

19. 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 can the society 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 as an employee. He occupies the office in his own right as an elected member. He 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.

20. 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 to passengers like Mr. M.R.Patil. The insurance company, therefore, cannot be held liable to pay the awarded amount.

21. 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 old, 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.

22. In this 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 Nos.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 No.3 and 4.

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