

(1992) 01 KAR CK 0007
In the Karnataka High Court
Case No : M.F.A. No. 2031 of 1987

Oriental General Insurance Co.

APPELLANT

Vs

Rukmini Bai

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 95 (1)

Citation : (1993) 1 ACC 106 : (1993) ACJ 335 : (1992) ILR (Kar) 2189 : (1992) 2 KarLJ 572

Hon'ble Judges : Rama Jois, J; Hanumanthappa, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; T. Seshagiri Rao, for R-1 and K.K. Rao, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—This Appeal is taken up for hearing at the admission stage itself by consent of both the learned Counsel for the parties.

2. This Appeal is by the Oriental Insurance Co. Ltd. presented u/s 110-D of the Motor Vehicles Act against the judgment and award made by the Motor Accidents Claims Tribunal, Bangalore Rural District, Bangalore,

3. The only ground urged by the Appellant-Insurance Company is that the claimant was a passenger and, therefore, the liability of the Insurance Company was limited to Rs. 15,000/- and even so, the Tribunal has fixed the liability to pay entire compensation of Rs. 28,000/-together with interest on the Insurance Company.

4. Briefly stated the facts of the case are these:

The stage carriage bearing Reg. No. MYA 5553 was plying from Magadi to Bangalore on 17-4-1985. The claimant and her mother were passengers in the said vehicle. There was an accident at about 7-30 p.m. After P.W. 1 Kali Bai,

mother of the claimant, alighted from the bus and the claimant was in the process of alighting from the bus, the bus suddenly moved. She fell down and the left portion of back mudguard of the bus hit her right leg and she sustained injuries to her right leg. She was removed to Magadi Government Hospital, thereafter to Victoria Hospital, Bangalore and then to Sanjay Gandhi Hospital, Bangalore, where she was admitted as an inpatient. She remained as an inpatient from 18-4-1985 till June, 1985. She suffered permanent disability of the right leg and it had almost become useless. Her leg was also shortened on account of the injuries sustained by her, Claim Petition was presented by the claimant for the injuries sustained by her.

5. The first question for consideration by the Tribunal was whether the appellant proved that she sustained injuries due to rash and negligent driving of the bus No. MYA 5553 by its driver on 17-4-1975? The issue was answered in the affirmative.

6. The next question for consideration by the Tribunal was about the quantum of compensation to be awarded. Having regard to the injuries sustained and the permanent disability suffered by the claimant, the Tribunal quantified the amount at Rs. 38000/- together with interest at 9%. The Tribunal fixed the liability both on the owner of the vehicle and the Insurance Company. The Insurance Company thereafter made an application requesting the Tribunal to modify the award and fix the liability on the Insurance Company only to the extent of Rs. 15,000/- and the rest on the owner of the vehicle on the ground that the liability of the Insurance Company under the policy was limited to Rs. 15,000/- per passenger. This application was rejected. Aggrieved by the award, the appellant has presented this Appeal.

7. The short question that arises for consideration in this Appeal is whether the claimant was a passenger or a third party. There is no dispute if the claimant was a third party the liability of the Insurance Company is unlimited. If on the other hand, the claimant was only a passenger, then the liability of the Insurance Company is limited to Rs. 15,000/-.

8. We have gone through the records of the Tribunal. In the claim Petition at page No. 4 it is stated thus:

"That on 17-4-1985, the injured had come from Magadi to Vengalappanahalli in bus bearing registration No. MYA 5553 at 7-30 p.m. as she wanted to get down at Vengalappanahalli and accordingly the bus was stopped at Vengalappanahalli, the injured petitioner while in the process of getting down from the bus from the front door the bus all of a sudden moved and the petitioner was kicked off and she fell down that the left portion of back mud guard of the bus came in contact with the right leg of the injured and the muscle was pulled off and the petitioner also sustained other bodily injuries..."

A reading of the above averment which is clear and unambiguous, shows that the claimant sustained injuries when she was in the process of getting down from the

bus as the bus was moved all of a sudden by its driver. The mother of the claimant who is an eye witness to the incident has given evidence as P.W.1. In her evidence she has stated thus:

"My daughter Rukmini Bai on whose behalf I applied this Petition for compensation now 11 years of age. 1 1/2 years ago, this Rukmini Bai and I were travelling in a bus from Magadi to Vengalappanahalli boarding it at about 7-30 p.m. When it came to our village and halted some of the passengers were getting down, my daughter was also getting down and the bus started suddenly as a result of which its body behind hit her...."

The evidence give by P.W.1 is consistent with what is stated in the Claim Petition. According to Section 95(1) of the Motor Vehicles Act, 1939, every insurance policy is bound to cover risk in respect of death or bodily injury to persons being carried in or entering or mounting or alighting from, the vehicle at the time of occurrence of the event out of which the claim arises. In the present case, there is no room for doubt that the accident occurred at that time when the claimant was alighting from the vehicle.

9. The learned Counsel for the claimant as well as the learned Counsel for the owner of the vehicle strenuously contended that the claimant had already alighted from the bus and she had ceased to be a passenger and, therefore, in relation to the accident, she was a third party and, consequently, the liability of the Insurance Company exists to pay the entire compensation awarded. If really the claimant had already alighted from the bus and thereafter the accident had occurred, the contention urged by them would have been unexceptionable. But, the pleadings and the evidence in the case establishes that when the claimant was in the process of alighting from the bus, on account of the bus having been moved by the driver, she fell down and was hit by the mudguard of the bus, and thereby she sustained injuries. In view of the Explanation below Section 95(1) a person in the process of alighting from a passenger vehicle, is a passenger and, therefore, in the present case, it is not possible to hold that the claimant had ceased to be a passenger and had become a third party, From this it follows, while the risk in respect of the death of passenger has to be compulsorily covered by the insurance policy, the limit of liability was Rs. 15,000/- according to Sub-section 2 of Section 95 as it stood on the date of the accident.

10. In the result, we make the following order:

(i) The Appeal is allowed;

(ii) The award made by the Tribunal is modified to this extent namely, that the liability of the Insurance Company is limited to Rs. 15,000/- and the interest thereon; and

(iii) In other respects, the award remains undisturbed.