
(1996) 02 KL CK 0021
In the High Court Of Kerala
Case No : M.F.A. No. 16 of 1996

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Usha

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 94, 95

Citation : (1996) ACJ 838 : (1996) 2 ILR (Ker) 265

Hon'ble Judges : T.V. Ramakrishnan, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant;

Final Decision : Dismissed

Judgement

T.V. Ramakrishnan, J.—This is an appeal filed by the respondent No. 3 in O.P. (MV) No. 573 of 1992 before the Motor Accidents Claims Tribunal, Thodupuzha. Appellant is the insurer of an auto-rickshaw bearing registration No. KL-7A-1756 involved in an accident which took place on 29.5.1992.

2. The application was filed by the injured person claiming compensation for the injuries suffered by him in the accident. Respondent No. 1 in the O.P. was the driver of the autorickshaw. According to the applicant the accident occurred due to the negligent driving of the autorickshaw by the respondent No. 1. The respondent No. 3 herein was impleaded as the additional respondent No. 4 in the O.P. as the owner of the vehicle who has insured the autorickshaw in question. As the respondent No. 3, the appellant, filed a written statement admitting the fact that it has issued an insurance policy in respect of the vehicle in the name of the respondent No. 3 herein. However, the liability to pay compensation was specifically denied on the ground that there is violation of one of the conditions of the policy inasmuch as the respondent No. 1 had no licence to drive the autorickshaw at the time of the accident.

3. The Tribunal found that the driver was not having a valid licence to drive the

autorickshaw at the time of the accident. Even though such a finding was entered, the Tribunal relying upon the provisions contained in Sub-section (4) of Section 149 of the Motor Vehicles Act, 1988, directed the appellant to pay the compensation making it clear that the amount paid by the appellant shall be recoverable from the person insured and the driver of the vehicle.

4. Learned Counsel for the appellant has contended that in the light of the finding that the driver was not having a valid licence to drive the autorickshaw, the award directing payment of the amount by the insurer is totally illegal and unsustainable in law. The Tribunal ought to have totally excluded the insurer from the liability. The award directing payment of the amount by the insurer even conditionally on the insurer being allowed to recover the amount paid under the award from the insured is unsustainable in law. In this connection, strong reliance was placed by the learned Counsel for the appellant on certain observations contained in the Full Bench decision of this court in National Insurance Co. Ltd. Vs. Roy George and Others,

5. In the award the Tribunal has made the insurer liable to pay the amount to the claimants specifically relying upon the provisions contained in the proviso to Section 149(4) of the Motor Vehicles Act. Section 149(4) with the relevant proviso is as under:

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this Sub-section shall be recoverable by the insurer from that person.

The above provision is to the effect that where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the insured, the insurer can avoid liability to satisfy the award passed by the Tribunal only in cases where the insurer can plead and prove that conditions contained in Clause (b) of Sub-section (2) of Section 149 are violated. The provision specifically states that the violation of the conditions mentioned in Sub-section (2) other than those in Clause (b) of that sub-section, even if proved, will not enable the insurer to avoid liability of satisfying the award passed in favour of the claimants even though in such cases the insurer may be able to recover the amount paid by it under the award from the insured. The legal effect of the provision is to make a distinction between the grounds mentioned in clauses (a) and (b) of Sub-section (2) of Section 149 and to say that only in case of violation of the conditions mentioned in Clause (b) that the insurer will be able to avoid the liability under the award to the claimants and not on the violation of any of the conditions mentioned in

Clause (a) of Sub-section (2) of Section 149. In the case of violation of the conditions mentioned in Clause (a) of Sub-section (2) of Section 149, the insurer can only claim reimbursement of the amount paid by it under the award to the claimants from the insured. It cannot disown its liability to pay the amount awarded to the claimants unlike in cases where it is able to plead and prove violation of the conditions mentioned in Clause (b) of Sub-section (2) of Section 149 of the Motor Vehicles Act. In cases coming under the latter category, the insurer cannot be made liable at all even conditionally on allowing it to recover such amount from the insured. This in fact is the view taken by the Tribunal in this case while making the insurer liable and permitting it to recover the amount paid by it under the award to the claimants from the insured.

6. As regards the observations contained in National Insurance Co. Ltd. Vs. Roy George and Others, we find that the Full Bench has not specifically considered the issue involved in the present case. The Full Bench was considering only the contention that u/s 149 inasmuch as the word "exceeds" is used, the insurance company shall in all cases first discharge the liability incurred by the insured in toto, whatever be such liability and then after deducting the amount covered by the statutory liability of the insurance company u/s 95(2), the company has to recover the excess amount from the insured by way of a separate action. In that case, the liability of the insurance company u/s 95(2)(b)(ii) to a passenger carried in the stage carriage vehicle was only Rs. 5,000/- as on 25.11.1981. The award passed was for a total amount of Rs. 42,600/- to the legal representatives of the deceased. The contention raised was that the insurer is bound to pay u/s 94(1) the entire amount awarded, namely, Rs. 42,600/- and to recover the excess paid, namely, Rs. 37,600/- after deducting the statutory liability of Rs. 5,000 from Rs. 42,600/- from the insured. The Full Bench was only considering the above contention raised by the insured in that case. As such whatever may be the wording of the observations contained in the said decision regarding the scope and effect of the provisions contained in Section 93(1) of the old Act corresponding to Section 149(4) of the new Act, the observations should be understood in the context in which they were made in the said judgment. Viewed in that manner, we do not think that there is any observation in the Full Bench decision which would stand against us in taking the above view.

7. In this view, we find that the Tribunal was right in taking the view that in cases where the only plea raised by the insurer is that the driver was not having a valid licence at the time of the accident for driving the vehicle insured, it may not be possible for the insurer to avoid the liability to pay the amount awarded to the claimants. The insurer in such circumstances is statutorily liable to pay the claimants the amount awarded and to recover the same from the insured as provided in the proviso. The proviso to Section 149(4) of the Motor Vehicles Act would enable the Tribunal to permit the insurer to recover such amount paid by it from the insured in execution of the award itself. As such, we would make it clear that the appellant will be entitled to recover the amount paid to the claimants under the impugned award from the insured in execution of the award passed in

O.P. (MV) No. 573 of 1992 itself. In fact the award itself has made it clear by saying that the appellant is entitled to recover the amount from the respondent No. 1 and additional respondent No. 4. A specific finding to that effect has been entered in the award itself. The operative portion of the award has made it clear that "on deposit of the amount due, R 3 can recover the said amount with interest at the rate of 12 per cent from date of deposit till recovery from R 1 and Addl. R 4".

Subject to the above observations and clarification, the appeal will stand dismissed in limine.