

(1997) 02 KL CK 0024

In the High Court Of Kerala

Case No : M.F.A. No's. 725, 727 to 729 and 731 of 734 of 1989 and 254 to 256 of 1990

Oriental Insurance Co. Ltd., Cochin

APPELLANT

Vs

M.U. alias and Others

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1998) ACJ 365 : AIR 1997 Ker 287 : (1997) 2 ILR (Ker) 663

Hon'ble Judges : P.A. Mohammed, J;D. Sreedevi, J

Bench : Division Bench

Advocate : Jacob Murikkan, for the Appellant; C.K. Pavitharan and Varghese Myloth and V.P. Yohannan and P.T. Georgekutty, for the Respondent

Judgement

Mohammed, J.—These appeals are filed by the Oriental Insurance Company Limited, the insurer of jeep K.E.F. 8955 involved in an accident which took place on 14-12-1986. They arose from petitions claiming compensation for the injuries and death, as the case may be. In all there were eleven claim petitions and the tribunal fixed the compensation payable for the injuries sustained by claimants in ten petitions and for death in one petition. The quantum of compensation awarded by the tribunal is not in dispute. The claimants have not filed any appeal against the orders of the tribunal awarding compensation. Appeal number, claim petition number, amount awarded by the tribunal and the nature of the claim are tabulated hereunder.

Appeal No.

Claim petition No.

Amount awarded

Nature of claim

MFA 725/89

MV OP No

216/87

12,200

Injuries

MFA 727/89

"

200/87

10,125

"

MFA 728/89

"

217/87

10,700

"

MFA 729/89

"

219/87

8,600

"

MFA 731/89

"

199/87

12,000

"

MFA 733/89

"

196/87

15,000

"

MFA 732/89

"

218/87

4,450

n

MFA 734/89

"

198/87

14,900

"

MFA 254/90

"

306/87

50,500

death

MFA 255/90

"

307/87

5,500

Injuries

MFA 256/90

"

308/87

5,300

"

2. On 14-12-1986 the claimants were travelling in the above jeep and when they reached a place called "Appanchira" the jeep knocked down a cyclist and thereafter it rammed on the rear side of a K.S.R.T.C. bus. Owing to the collision the jeep overturned as a result of which ten passengers sustained injuries and one person died. That is the background of the claim petitions presented before the" tribunal.

3. Heard learned counsel for the appellant-insurer, the owner of the vehicle and the claimants.

4. The appellant has raised two points in these appeals; one is, Ext. B1 policy limits the liability of the insurer only in respect of five passengers and the other is, the liability of the insurer with regard to each passenger is limited to Rs. 15,000/-. Ext. B1 is the policy involved in all these cases. It was marked in the proceeding and the existence of the same was not challenged by any of the contesting parties. Ext. B1 is styled as commercial vehicle comprehensive policy. In the schedule of the premium of the policy, the number of passengers is shown as 5 and the limit per passenger is stated as fifteen thousand rupees. In the third page of the policy it is stated that the liability of the insurer is limited to Rs. 75,000/-(Rs. 15,000x5).

5. The question is whether the insurer in view of the terms contained in Ext. B1 policy is liable to pay compensation for the death or the injuries to persons exceeding six. This contention will have to be examined with reference to the provisions contained in the Motor Vehicles Act as stood at the relevant time. Section 95 of the Act deals with the requirements of policies and the limits of liability. The relevant provision which we are concerned in these appeals is Section 95(2)(b)(ii) which is as follows :

,"95. Requirements of policies and limits of liability -

(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) xx xx xx xx xx

(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).....

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

The above provision has to be applied in terms of the contract between the insurer and the owner of the offending vehicle. The contract Ext. B1 specifically provides for six passengers and limits the liability as Rs. 75,000/-. However, the tribunal has observed to the effect that the liability of the insurer in respect of one passenger is limited to fifteen thousand rupees, but the insurer is liable to pay compensation for all the passengers.

6. In support of the first contention referred to above counsel for the appellant placed before us the decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . Paragraph 7 of the said decision provides that the liability undertaken by the insurer with regard to death or bodily injury to any person caused by or arising out of use of motor vehicles falling u/s 11(1)(i) has been confined to such amount as is necessary to meet the requirements of the Motor Vehicles Act. 1939. It further provides that the

details of the premium also indicate that no additional premium with regard to a case tailing u/s 11(1)(i) was paid by the owner of the vehicle to the insurance company. In this case there is no evidence that any extra premium has been paid by the owner in addition to the amount paid as required under the Act. Though the policy was found to be a comprehensively insured one unless additional premium was charged it cannot be liable for third party risk over and above the statutory limit. Therefore this is a case as we have observed earlier which is falling under clause (b)(ii) of Section 95(2).

7. The counsel for the appellant has also relied on a decision of the Orissa High Court in *New India Assurance Co. Ltd. v. Baia Mallick*. 1989 ACJ 692 : (AIR 1959 NOC 190). That was a case coming under Section 95(2)(a) of the Act. However, it is observed in that decision :

"In other words, excluding the driver the liability of the insurance company would extend for payment of compensation in respect of six persons being carried in the vehicle, Sub-section (2) of Section 95 has been engrafted in the statute to safeguard the interests of the insurer. Clause (a) thus prescribed the limits in respect of compulsory insurable risks. Therefore, whatever be the number of persons employed and whatever be the number of persons who have actually suffered death or bodily injury, the liability of the insurer in respect of death or bodily injury will not extend beyond six persons. This, in my view, is the true import and meaning of Section 95(2)(a) of the Act."

While interpreting the provisions contained in Section 95(2)(a) of the Act the Court very well kept in mind the legislative purpose of the enactment. In this context it is apt to note what the Supreme Court said in *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, : *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, (para 4 of AIR) as follows:

"The mechanical approach to construction is altogether out of step with the modern positive approach. The modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act."

8. The counsel for the owner of the vehicle on the other hand contended that Sub-clause (ii) of Section 95(2)(a) does not prescribe the number of passengers and therefore it cannot be restricted to six passengers alone. Of course, Section 95(2)(a) of the Act provides the number of persons entitled to get compensation as six. But that does not mean there is no difference between Clause (a) of Section 95(2) and Clause (b)(ii) thereof. Clause (a) and Clause (b) have separate and distinct purposes. Both these clauses, of course, deal with limits of policy of insurance and coverage in respect of any one accident. Clause (a) relates to goods vehicle whereas Clause (b) relates to vehicle in which passengers are carried for hire or reward or in pursuance of contract employment. As far as goods vehicles are concerned the liability of the insurer in any one accident is limited to six employees excluding the driver. But such a restriction is not

possible in the case of vehicles carrying passengers because the passenger capacity varies from vehicle to vehicle. But in such cases each individual passenger is entitled to get compensation of Rs. 15,000/-. The number of persons authorised to get such entitlement is dependent on the terms of the contract. As pointed out earlier in this case. Ext. B1 policy specifically provides that the liability of the insurer is limited to Rs. 75,000/-, that is to say, five persons are entitled to receive the compensation at the rate of Rs. 15,000/- per passenger.

9. On behalf of the owner of the vehicle it was brought to our notice the decision of the Supreme Court in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, . On the basis of the said decision, counsel points out that in respect of each passenger there is an accident and when accident is taken as one, all the passengers travelling in the vehicle are entitled to the benefit irrespective of the prescription of number of passengers in the contract entered into between the parties. The Supreme Court said in the above decision that "the expression "any accident" in Section 95(2) is susceptible of equally reasonable meanings or interpretations. If a collision takes place resulting injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident." What emerges from this decision is that an insurer cannot argue that its liability will be limited to Rs. 20,000/- in respect of the injuries caused to all live persons considered enblock as a single entity since they were injured as a result of one single collision. This is explicit from the following observation contained therein (at pp. 2064-65 of AIR).

"On the other hand, if the matter is looked at subjectively as it ought to be the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident."

In this context it is necessary to note that the Supreme Court was dealing only with Clause (a) of Section 95(2) and that too, as it existed on February 1, 1966, when the collision between the car and the truck took place. This has been specifically stated by it in paragraph 10 of the decision cited above.

10. Now let us examine the position as far as the present case is concerned. The limit of fifteen thousand rupees under sub-clause (ii) of Section 95(2)(a) is for "each individual passenger". That means each passenger who sustained injuries can claim Rs. 15,000/-. The said amount is not meant for all the injured passengers involved in an accident.

11. The decision of "the Andhra Pradesh High Court in Kannekanti Veramma v. Puli Ramakotaiah (1990) I TAC 406 is also brought to our notice. That was a case falling u/s 95(2)(a). What is decided there is that merely because more than six persons have been carried while using the vehicle on the public way for the purpose for which the permit was issued, it cannot be said that there is a contravention of the covenants of the policy though there is a contravention of the conditions of the statute. If there is any contravention of the conditions, it is always open to the other party to take appropriate action, but that would not be a ground for holding that it is a breach of conditions of" the contract of policy of the insurance. Under those circumstances the Court held that Section 96(2) has no application and Section 95(2)(a) does not prohibit the Court to award the amount of damages. This decision is of no avail in a case where there is a specific agreement between the insurer and insured limiting the liability of indemnification to a fixed number of passengers as available in the present case.

12. In view of the discussion herein above the distinction between the provisions contained in Section 95(2)(a) and Section 95(2)(b)(ii) is clearly receivable. Once it is so understood the liability of the insurer u/s 95(2)(b)(ii) is limited to the number of passengers prescribed in the insurance policy. In view of this position, the observation of the tribunal to the contrary effect which is challenged before us is erroneous. The said observation is therefore, set aside.

13. Learned counsel for the claimants in M.F.A. Nos. 731/89, 732/89, 729/89, 728/89 and 733/89 has pleaded that the claimants in those cases had approached the tribunal at the earliest point of time and hence the insurer was liable to satisfy their claim. In other words, the insurance company had to pay the compensation fixed in respect of these five claims and the payments for others should be refused. The effect of this argument is that the liability of the insurance would be considerably reduced in view of the fact that the tribunal has not granted maximum compensation in those cases. The compensation payable to the claimants in the above five claims will come only to Rs. 52,100/-. That means the insurer will have to pay only Rs. 52,100/- even though it is liable to pay the total amount of Rs. 75,000/-. Therefore, we do not countenance the said contention advanced by the counsel.

14. Thus the liability of the insurer-appellant is restricted to Rs. 75,000/- in all. The tribunal is directed to apportion this amount among all the claimants on pro rata basis. The amount so apportioned each claimant shall be first deducted from the amount awarded by the tribunal. Then the balance amount payable under the award in the case of each claimants shall be satisfied by the owner of the vehicle.

15. The counsel for the appellant submitted that the amount has already been deposited in M.F.A. No. 727 of 1989 arising out of M.V.O.P. No. 2(X) of 1987. The said amount shall be deducted from the amount of Rs. 75,000/- ordered to be paid by the insurance company. The appeals are disposed of as above. No order as to costs.