(1998) 10 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1441 of 1990

Oriental Insurance Company Limited, Bangalore APPELLANT

Vs

Vasantha Rao alias Vasudev and others RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:

Citation : (2001) ACJ 603 : (2000) 1 KarLJ 200

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : Sri H.G. Ramesh, for the Appellant; Sri Ashok B. Patil, for the Respondent

Judgement

1. This is the insurer''s appeal questioning the liability fastened by the Claims Tribunal, Bijapur in MVC No. 292 of 1987.

2. The brief facts of the case are as follows:

The parents of the deceased Raghavendra filed a claim petition u/s 110-A of the Motor Vehicles Act claiming compensation of Rs. 3,17,000/- on account of his death in the Motor Vehicle accident that took place on 2-6-1987 at about 5.00 p.m. near Managoli Village on Bijapur Basavana Bagewadi Road due to the rash and negligent driving of the Tempo bearing Registration No. MYJ 7972 by its driver while the deceased was accompanying as a passenger in the said vehicle.

3. The respondents filed statement of objections resisting the claim petition.

4. The claimants examined P.Ws. 1 and 2 and produced Exts. P. 1 to P. 11 whereas the respondent examined R.W. 1 and produced the policy of insurance marked as Ext. R. 1.

5. The Claims Tribunal considering the evidence and the police records held that the accident took place on account of the rash and negligent driving of the Tempo bearing Regn. No. MYJ 7972 by its driver and further considering the evidence and the age of the parents awarded a total compensation of Rs.

90,000/-. The Oriental Insurance Company Limited, being aggrieved of the liability fastened on it has come up with this appeal.

5-A. The claimants have filed cross-objections for enhancement of compensation.

6. Learned Counsel for the appellants contended that as per the terms and conditions of the policy Ext. R.1, the maximum liability in respect of per passenger is Rs. 30,000/- and 6 passengers have been covered. The premium paid is at the rate of Rs. 30/- per passenger and the total premium paid is Rs. 180/-. Therefore the limit of the Insurance Company in respect of the death or bodily injury is limited to Rs. 30,000/-. He further contended that the learned Member of the Claims Tribunal has erred in not taking into consideration the entries made in the policy of insurance and the premium paid. He further submitted that the decision relied on by the Claims Tribunal is impliedly overruled in MFA No. 1157 of 1984, in view of the judgment of the Supreme Court as held in para 6 thereof. Further, the learned Counsel for the appellants also relied on the decision in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, . It is held that the liability of the Insurance Company is in accordance with the premium paid and in the case on hand, the premium paid is Rs. 30/-. Therefore, the liability per passenger is restricted to Rs. 30,000/-. Accordingly, prayed to allow the appeal to the extent of its liability.

7. Learned Counsel for the respondents-claimants submitted that the liability fastened on the Insurance Company is proper and therefore, prayed to dismiss the appeal. Respondent 3, the owner though served, remained unrepresented.

8. The points that arise for consideration are:

1. Whether the Claims Tribunal is justified in fastening the entire liability on the Insurance Company?

2. If so, the liability to be interfered with?

9. In the unreported decision in MFA No. 1157 of 1984, at para 6 it is stated as under:

"6. This takes us to the next question as to the liability of the Insurer. It was contended on behalf of the insurer that having regard to the premium paid the liability is restricted only to Rs. 50,000/- in respect of the third parties. It was pointed out that comprehensive premium of Rs. 476/- has been paid and as per the Tariff and also the decision of this Court in United India Fire and General Insurance Co. Vs. Azeerunnisa and Others, , the payment of this premium of Rs. 426/- covers the liability only to the extent of Rs. 50,000/- and not more. As per the Tariff Rs. 426/- paid as comprehensive premium creates the liability only to the extent of Rs. 50,000/- could not be disputed by the learned Counsel for the Claimants. However, our attention was invited to the decision of this Court in Oriental Fire and General Insurance Co. Ltd. Vs. Jagadish Babu and Others, , wherein, it has been held by this Court that if the columns are left blank in the Insurance Policy regarding the liability, it should be taken that the Insurer has undertaken unlimited liability. In view of the decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , wherein, it has been held that a specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of extra liability undertaken by the Insurance Company and that the requirement of the Tariff Regulation in this regard should be complied with, before fastening a higher liability on the Insurance Company. We find that the decision of this Court relied upon by the learned Counsel stands impliedly overruled and it cannot assist the appellants to fasten a higher liability on the Insurer, on the mere ground that there is a blank in the policy regarding limit of liability of the Insurer. When there is such a blank in the policy, the Court has to verify the premium paid and whether that premium paid covers "act only" policy risk or whether it covers any higher risk. When undisputedly the premium paid in the present case does not cover the higher risk, the mere fact that in the column of liability there is a blank will not enure to the benefit of the claimants to fasten a higher liability on the Insurer. Therefore, the liability of the Insurer in the present case has to be limited only to Rs. 50,000/- and the interest thereon and the balance of the amount has to be paid by the owner".

10. It is pointed out that the Court has to examine the amount of premium paid to cover the risk and whether the payment of the premium is in accordance with the Tariff regulations or not. It is only in case where the total premium is paid according to the Tariff regulations, then only holding the Insurance Company liable for unlimited liability does arise. In the decision supra, it is also observed that the decision in Oriental Fire and General Insurance Company Limited''s case, supra, is impliedly overruled. In that view of the matter, merely because of the reason, some columns are left blank, the Court should not proceed to hold that the liability is unlimited. The contention of the learned Counsel for the appellant is also supported by the decision in the case of New India Assurance Company Limited, supra, wherein at para 8, it is held as under:

"It was contended before the High Court that a separate premium has been paid for the passengers. This shows that there was a special contract to cover unlimited liability in respect of passengers between the appellant-company and respondent 4. The Tribunal as well as the High Court seem to have proceeded on the basis that the appellant-company had charged an extra premium of 0.50 paise per passenger to cover the risk of unlimited liability towards passengers. This seems to be an error. The premium of Rs. 600/-has been paid in respect of 50 passengers. The policy clearly shows this. It is not 0.50 paise per passenger. It is pointed out by the appellant-company with reference to its tariff in respect of "Legal liability for Accidents to Passengers" that if the limit of liability for any one passenger is fifteen thousand rupees, the rate of annual premium per passenger is Rs. 12/-. If the limit is twenty thousand rupees, the rate of premium per passenger is Rs. 23/- per annum and so on. In respect of unlimited liability, the premium payable per passenger is Rs. 50/-".

A plain reading of the observations of the Supreme Court makes it clear that according to the premium paid, that the Insurance Company has to be made liable. If the premium per passenger is Rs. 50/-, then the liability of the Insurance Company is unlimited. In the case on hand, the learned Counsel for the appellant has produced the Tariff Regulations. At page 43, it provides for the payment of the premium and also the extent of liability which reads as under:

"Legal liability for Accidents to Passengers

(i) Applicable to all passenger vehicles except -- (i) Motorised Rickshawsi; (ii) Miscellaneous vehicles and (iii) Motor Trade (Road Risks)

Limit of liability

Limit of liability

Limit of liability

Limit of liability

Any one passenger

Rs. 15.000/-

Rs. 20,000/-

Rs. 30.000/-

Unlimited

Premium per passenger

Rs. 12/-

Rs. 237-

Rs. 30/-

Rs. 50/-

If the premium paid is Rs. 12/-, the liability of the Insurance Company per passenger is Rs. 15,000/-. If the premium is Rs. 23, the liability of the Insurance Company is Rs. 20,000/-. If the premium is Rs. 30/- the liability of the Insurance Company is Rs. 30,000/- and if the premium is Rs. 50/-, then the liability of the Insurance Company is unlimited. In that view of the matter, it has to be examined as to what is the premium paid by the owner to cover the risk of the passengers.

11. On a perusal of the policy of Insurance, the capacity of the vehicle is 6+1, that is 6 passengers with one driver. In respect of 6 passengers, at the rate of Rs. 30/- the premium paid is Rs. 180/- and therefore, it is clear that the liability of the Insurance Company per passenger in respect of death or bodily injury is only Rs. 30,000/- and the judgment of the Supreme Court lends support to the

case of the appellant. Therefore, it has to be held that the liability of the appellant has to be restricted to the extent of Rs. 30,000/- only with proportionate interest and costs and the balance amount of compensation has to be made good by the owner.

12. For the foregoing reasons, the appeal is allowed restricting the liability of the Insurance Company to the extent of Rs. 30,000/- with proportionate interest and costs and the cross-objections filed is dismissed as the same is not maintainable in the appeal filed by the Insurance Company in the light of the decision in United India Insurance Co. Vs. Balasubramanyam, .

Parties shall bear their own costs.

