(1998) 12 KL CK 0018

In the High Court Of Kerala

Case No : M.F.A. No''s. 144, 152, 153 and 168 of 1990

P.M. Santhoshkumar, T.K. Jayan, K.N. Sivakumar and Ganesan alias T.K. Ramachandran	APPELLANT
Vs	
P.K. Kareem and Another	RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A, 95, 95(2)

Citation : (2000) ACJ 9 : (1999) 96 CompCas 45 : (1999) 1 ILR (Ker) 686

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

Bench : Division Bench

Advocate : T.K. Radhakrishnan, for the Appellant; Mathews Jacob, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—These batch of appeals are from the common award dated July 20, 1989, passed by the Additional Motor Accidents Claims Tribunal, Ernakulam. The claimants in the motor accident claims are the appellants. The main contesting respondent in these appeals is the New India Assurance Company Limited, Ernakulam, the insurer of the offending vehicle involved in the accident which occurred on September 13, 1986. The appellants sustained injuries in the above accident and, therefore, filed the claim petitions before the Tribunal claiming compensation u/s 110A of the Motor Vehicles Act, 1939 (for short "the Act"). The Tribunal after enquiry awarded the compensation to all claimants but the insurance company was absolved from indemnifying the owner of the vehicle. The claimants being aggrieved by the aforesaid decision of the Tribunal filed these appeals.

2. The claim petition numbers, appeal numbers, compensation claimed and compensation awarded are tabulated hereunder :

Claim Petition No.

Appeal No.

Compensation claimed (Rs.)

Compensate awarded (Rs.

O.P. (M.V.) 10/87

MFA 144/90

55,300

11,000

O.P. (M.V.) 13/37

MFA 152/90

30,000

11,000

O.P. (M.V.) 11/87

MFA 153/90

25,000

7,000

O.P. (M.V.) 12/87

MFA 168/90

58,500

12,000

3. The dispute involved in these appeals mainly relates to the coverage of exhibit B-1 policy. On behalf of the appellants it was contended that the finding of the Tribunal that the injured were the passengers carried by the lorry and so they were not covered by exhibit B-l policy was faulty and unsustainable in law. On the other hand, counsel for the insurance company submitted that the policy in question is an "Act only" policy and there was no liability to pay compensation for the passengers carried by the lorry inasmuch as no additional premium was collected.

4. In view of the above rival contentions we have perused exhibit B-l policy, dated November 30, 1986, issued by the New India Assurance Company Limited in respect of lorry KLM 1353. It is therefrom revealed that the policy in question is "Commercial Vehicles Comprehensive Policy" as described in the second page of exhibit B-l. Though additional premium was not collected a sum of Rs. 240 had been collected towards premium for liability to public risk. No doubt this is a statutory policy as required u/s 94 of the Act. It is provided in the policy that the

limit of the amount of the company''s liability u/s II-(1) (i) in respect of any one accident is the amount as is necessary to meet the requirements of the Act. This is what is provided in Section 95(2)(b)(i), namely, Rs. 50,000. Even though no additional premium is collected, the company is liable to pay this amount provided in the above section. There is no case for unlimited liability and, therefore, payment of additional premium has no relevancy. What is claimed is only statutory liability to the extent of Rs. 50,000. The total amount of compensation awarded by the Tribunal in all these cases does not exceed Rs. 50,000 and, therefore, we need not go into the question of non-collection of additional premium.

5. In a recent case, the Supreme Court has dealt with a question as to the liablity of the insurer to pay compensation to an occupant of a car who is gratuitously travelling in a car. The question was whether the expression "any person" contained in Section II-(1)(a) of the policy would include an occupant of the car. This question has been decided by the Supreme Court in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, . There the Supreme Court after analysing Section II-(1)(a) of the policy observed (page 309) :

"Thus, u/s II-(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to ''any person''. The expression ''any person'' would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of Clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence, under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant."

6. In the present case, the passengers carried by the vehicle are not gratuitous passengers. It has come out in evidence that the passengers were carried in the vehicle in pursuance of a contract entered with the owner of the vehicle. The District Collector, Ernakulam, chartered the lorry for the purpose of carrying these persons for performance in connection with Onam festival celebrations under the auspices of the Government. The performance was arranged by "Viswalekha Arts Club". Thus, it was clear that the passengers were carried by the vehicle in pursuance of a contract of employment and hence Section 95(2)(b)(i) would apply.

7. The Supreme Court in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , was considering the relevant Clause in the policy that is to say, Section II--"Liability to third parties". Exhibit B-1 policy contains a similar Clause which is reproduced hereunder : "SECTION II--LIABILITY To THIRD PARTIES.

1. Subject to the limits of liability the company will indemnify the insured against all sums including claimant''s cost and expenses which the insured shall become legally liable to pay in respect of--

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle."

8. Therefore, the interpretation of the identical Clause made by the Supreme Court is squarely applicable in the present case. Therefore, we are of the view that the insurance company is liable to the extent necessary to meet the requirements of Section 95 of the Act. In as much as the total amount of compensation awarded by the Tribunal is only Rs. 50,000, the insurance company is liable to indemnify the owner of the vehicle in respect of the entire compensation awarded by the Tribunal.

9. In view of the discussion hereinabove, we set aside the finding in the common award that the passengers carried by the lorry are not covered by the policy and hence the insurer is not liable to indemnify the owner of the vehicle. Accordingly, we modify the impugned award to the effect that the insurance company is liable to indemnify the owner of the vehicle in respect of the compensation awarded by the Tribunal to all the claimants. The appeals are allowed to the extent indicated above. No order as to costs.