
(2009) 08 KL CK 0002
In the High Court Of Kerala
Case No : M.A.C.A. No. 582 of 2008

Rajan	Vs	APPELLANT
Pravith		RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 95
Motor Vehicles Act, 1988 — Section 145, 146(1), 147(1), 147(2)

Citation : (2010) 1 ILR (Ker) 284 : (2009) 3 KLT 939 : (2011) 1 TAC 637

Hon'ble Judges : M.L. Joseph Francis, J;K.M. Joseph, J

Bench : Division Bench

Advocate : C. Chandrasek Haran, for the Appellant; P.A. Reziya and V. Binoy Ram, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—The interesting question that arises for consideration is whether the first respondent who was working as a cleaner in a bus could claim as a third party. The first respondent was travelling in a bus. One of the tyres burst. He was asked to replace the tyre. While he was putting the jacky near the rear wheel of the vehicle, the second respondent Driver moved the vehicle suddenly by which the jacky turned down and the first respondent was jammed under the bus. According to the first respondent, he suffered serious injuries. Accordingly, he filed a petition against the appellant who was the first respondent and owner of the vehicle, the second respondent who was the driver of the vehicle, and the third respondent which was the insurer. The Tribunal found negligence on the part of the second respondent driver and awarded a sum of Rs. 1,38,300/-. The third respondent took up the contention that it is not liable to indemnify the appellant. The appellant was set ex parte. The following is the finding of the Tribunal on Issue No. 4 which related to the liability of the third respondent:

12. Issue No. 4: It is contended by contesting 3rd respondent that they are not liable to indemnify the insured. Ext.B 1 is a comprehensive policy. The schedule

to Ext.B 1 would show that premium was paid covering the liability of passengers, non fare paying passengers, paid driver and/or conductor. Even though it is typed in Ext.B1 "Add PA to driver, conductor and cleaner" the amount payable under this head is not seen paid. So the liability of cleaner is not covered by Ext.B 1 policy. As per the amended statute also the liability of cleaner is not strictly coverable by the policy issued by the insurer. So it has to be held that since the accident was due to rash and negligent driving of bus by the 2nd respondent who was under the employment of 1st respondent and respondents 1 and 2 are liable to compensate the petitioner.

On the said basis, the petition was allowed against the appellant and he was directed to deposit the amount with interest at 7 percent per annum from 17.12.01 till the date of actual payment. This Appeal is filed challenging the aforesaid finding and the relief granted on the said basis.

2. We heard Shri C. Chandrasekharan, learned Counsel for the appellant and Smt. P.A. Reziya, learned Counsel appearing for the third respondent Insurance Company. There can be no doubt that the finding of the Tribunal that the appellant cannot claim to be indemnified on the strength of Ext.B 1, though it is a comprehensive policy, would not require any interference. This is for the reason that in Ext.B 1, as found by the Tribunal, premium was paid covering the liability of passengers, non-fare paying passengers, paid driver and/or conductor. Though "Add PA to driver, conductor and cleaner", as correctly found, the amount payable under this head is not seen paid.

3. However, learned Counsel for the appellant would contend that having regard to the facts of this case, it is clear that the appellant must be treated as the third party. In this connection, he relied on the Judgment of the Karnataka High Court in *The New India Assurance Company Ltd. Vs. Shri R. Thippeswamy Reddy, Shri Rudranna @ Maharudranna and Smt. Geetha*, Therein, the claimant who was a cleaner in a passenger bus, got down from the bus and was regulating movement of people in front of the bus. The driver of the bus suddenly moved the bus, running it over the right foot of the claimant. A learned Single Judge of the Karnataka High Court took the view that the cleaner would be a third party. In paragraph 16, the Court held as follows:

16. From the aforesaid judgments, it is clear, if the injured is an employee and in the course of his employment if he is injured, whether he is inside the bus or outside the bus, under the provisions of the Workmen's Compensation Act he is entitled to compensation. Thus, to be entitled to compensation what has to be established is that the injured was an employee of the insured, he was injured in the course of employment and then he is entitled to compensation. But, that is not the position in respect of cases arising out of the Motor Vehicles Act of 1988. For being entitled to compensation under the Act, the claim for compensation should arise in respect of accidents involving the death of or bodily injury to persons arising out of the user of motor vehicles and the relationship of master and servant is not necessary. If such a relationship exists it enures to the benefit

of an employee to a limited extent as provided under proviso (i) to Sub-section (1) of Section 147, i.e. if the insured had taken a policy covering only third party risk, even then the driver of motor vehicle which is insured and if it is a public service vehicle the employee engaged as a conductor of the vehicle or employee employed in examining the tickets on the vehicle and if it is a goods carriage, employee being carried in the vehicle are also entitled to compensation to the extent it is provided under the provisions of Workmen's Compensation Act even though the insured had not paid any additional premium. However, the said benefit is not available to other categories of employees of the insured. But, if other categories of employees at the time of accident though in the course of employment are outside the vehicle, then they would become "third party" under the Act, notwithstanding the fact that such a person is also an employee of the insured. Such an employee has the option of either claiming the compensation under the provisions of Motor Vehicles Act as a third party or as an employee of the insured under the provisions of Workmen's Compensation Act. If the claim is under the provisions of the Workmen's Compensation Act, the liability of the insurance company will be only to that extent as provided under Workmen's Compensation Act. If the claim is under the provisions of Motor Vehicles Act, as a third party, then the liability would be unlimited as provided u/s 147(2) of the Act. It is to be remembered that both the Workmen's Compensation Act and the Motor Vehicles Act are beneficial legislation which are enacted to protect the interest of victims to the accident either in the course of employment or on account of use of motor vehicle. Any interpretation to be placed on these provisions should be in consonance with the object with which these enactments are enacted. Any other view would defeat the very purpose of the Act. If the victim of an accident is entitled to compensation under both the aforesaid enactments, then that enactment which is more beneficial to him is to be adopted. In those circumstances, I am of the view that there is no substance in the contention of the appellant that the Tribunal had wrongly foisted the liability on them. In that view of the matter, I do not find any merit in the appeal.

4. Per contra, learned Counsel for the respondent Insurance Company would contend that the appellant/first respondent cannot be treated as a third party. She relied on the decision of the Apex Court in Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, . Therein, the legal heirs of a person employed as Khalasi filed a claim in the Workmen's Compensation Court against the owner and Insurance Company. The court found that the vehicle was comprehensively insured and directed payment under the Act. There was no dispute that khalasi would take in a cleaner also. The Insurance Company took the contention that no additional premium was paid to cover the risk pertaining to a khalasi. The Apex Court was considering the Appeal by the owner of the vehicle. Dismissing the Appeal, the Apex Court held, inter alia, as follows:

10. The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases "any person" and "any passenger" in Clauses (i) and (ii) of Sub-section (b) of Section 147(1) are of wide

amplitude, is correct (See: New India Assurance Company Vs. Shri Satpal Singh and Others, . However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured. In other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless -first; the liability of the insured arises under Workmen's Compensation Act, 1923 and second; if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "passenger". If this was permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word "cleaner" while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger.

5. The words "third party" is defined in Section 145(g) of the Motor Vehicles Act as including "the Government". Section 146(1) reads as follows:

146. Necessity for insurance against third party risk.-- (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation:- A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

It is relevant to extract Section 147 which reads as follows:

147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
- (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the vehicle in a public place:

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee -

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation:- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Section 147, inter alia, deals with the requirements of a valid policy of insurance in compliance with Section 146. Thus, as far as the employees are concerned, the Act stipulates for an insurance policy which will ensure coverage to the three categories of employees. It is significant to note that a cleaner of a bus is not included among the employees in respect of whom there is to be compulsory coverage under the "Act Only" insurance policy.

6. In one sense, every person who is not a party to the contract of insurance, can be treated as a third party. A person travelling in a goods vehicle as a gratuitous passenger would be a third party to the contract. But, it is trite law that such a gratuitous passenger would not be covered, even after the amendment in 1994, in the light of the decision of the Apex Court in *New India Assurance Co. Ltd. v. Asha Rani And Ors.* 2003 (1) KLT 165 : (2003) 2 SCC 223.

In the Judgment rendered by Justice S.B. Sinha, supplementing the Judgment of Justice GB. Pattanaik, Chief Justice, it is, inter alia, stated as follows:

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party".

After referring to the proviso in Section 147 of the Motor Vehicles Act, 1988, as also Clause (2) of the proviso to Section 95 of the 1939 Act, it was, inter alia, held as follows:

22. Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923.

No doubt, it is open to the parties to have an extended Concept of third party. If a person is an employee and if he does not fall within any of the categories mentioned in the proviso to Sub-section (1) of Section 147, then if he were injured while he was travelling in the vehicle, he will not be entitled to claim against the insurer.

7. The question, however, which arises for our consideration is whether the insurer will become liable by virtue of the fact that an employee who is not otherwise covered, would be entitled to claim as a third party for the reason that he sustained the injuries in an accident which takes place when he is standing outside the vehicle and in a public place. In this case, the cleaner was engaged in doing some thing which is related to his employment. At any rate, it can be said to be an act which is emanated directly from his employment. It is at that stage that the accident admittedly occurred. If he were seated inside the vehicle while he sustained injuries, he could not have possibly raised the claim as a third party, as he does not fulfill otherwise the requirement of being a third party. For the mere reason that the accident took place when he was in the job of replacing the tyre, we are of the view that his standing on a public place, but carrying out the act related to his employment, cannot make him a third party. The Act contemplates compulsory coverage under an act policy only in respect of certain employees. Admittedly, the injured in this case does not fall in any of those categories. The injuries were sustained when he was carrying out his duties in connection with his employment. It may be another matter if the same person is injured when he is in a public place, if he were there not in the course of his employment. In so far as the accident in this case is concerned, it must be treated as having occurred in the course of the employment of the first respondent. The mere fact that he happened to be standing outside the vehicle, will not transform him into a third party and he would fall within the ambit of the proviso to Section 147(1). In such circumstances, we would be required to considerably strain the concept of "third party" to include the injured in this case

also as a third party. In such circumstances, we feel that there is no merit in the Appeal and the Appeal fails and it is dismissed.