(2010) 11 KL CK 0366

In the High Court Of Kerala

Case No : MACA. No. 2194 of 2008

Sethunath APPELLANT

Vs

John Varghese and Others RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 66

Citation : (2011) ACJ 2242 : (2011) 1 CivCC 822 : (2011) 1 KLJ 550 : (2011) 1 KLT 222 : (2011) 2 RCR(Civil) 579 : (2011) 2 RCR(Civil) 579 : (2011) 2 TAC 48

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Paulson C. Varghese and Mathew Skaria, for the Appellant; N.P. Sethu, P. Jayasankar, C.P. Udayabhanu, Preethi K. Purushothaman and R. Harikrishnan, for the Respondent

Final Decision : Allowed

Judgement

A.K. Basheer. J.

1. All these cases are being disposed of by this common judgment, since the core issue that has emanated from a common award passed by a Motor Accident Claims Tribunal in relation to a road traffic accident is common to all. The question that has cropped up in these cases is: "Can the insurer claim exoneration from its liability to indemnify the owner of a transport, vehicle, if the said vehicle gets involved in an accident after the expiry of the period of validity of the permit issued by the transport authorities in respect of the said vehicle" ? To put it differently, is the liability of the insurance company to indemnify the owner of a transport vehicle co-terminous with the period of validity of the permit?

2. Shorn of unnecessary details, the relevant facts which lead to this legal imbroglio may be briefly noticed.

3. Two pedestrians were knocked down by an ambassador car on July 17, 2004.

The car had been admittedly granted a permit by the transport authorities to be used as a Tourist Taxi or "passenger carrying commercial vehicle". It is beyond controversy that the validity of the permit had expired on May 19,2004, about two months prior to the accident. The insurance company admitted policy coverage in respect of the above vehicle. But the company resisted the claim for compensation made by the two injured pedestrians and contended that it would not be liable to indemnify the owner of the vehicle in as much as at the time of the accident the offending vehicle was being run without a valid permit. Though the above contention was accepted by the Tribunal, it directed the insurance company to pay the compensation to the two victims and recover the same from the owner of the vehicle. The above order is under challenge in these appeals and Writ Petitions.

4. MACA Nos. 2615/08 and 2194/08 are at the instance of the legal heir of the registered owner of the offending vehicle. According to this appellant, his predecessor in interest (late Mukundan) had transferred the vehicle to Smt. Thankamma way back on May 9,1997 on the strength of an agreement for sale. Pursuant to the said agreement, the vehicle had been put in possession of Smt. Thankamma on the date of agreement itself. However, it was admitted by this appellant before the Tribunal that his predecessor continued to be the registered owner on record.

5. MACA Nos. 1486/10 and 1487/10 have been filed by Smt. Thankamma, the subsequent transferee of the vehicle. According to this appellant, she had sold the vehicle to one Benny Markose and that the said person had been in actual possession and control of the vehicle at the time of the accident.

6. MACA Nos. 3177/09 and 3178/09 are filed by the owner-driver of the offending vehicle (Benny Markose referred to above). He admitted that at the time of the accident, he was in possession and ownership of the vehicle. According to him, he had purchased the vehicle from Smt. Thankamma on the strength of an agreement.

7. Writ Petition Nos. 23653/10 and 23973/10 are filed by the legal heir of the registered owner who is the common appellant in MACA Nos. 2194 and 2615 of 2008 referred to above. The challenge in these two writ petitions is directed against the proceedings initiated by the revenue authorities under the Revenue Recovery Act in execution of the award at the instance of the insurance company.

8. It is contended by the appellants in all these cases that the insurance company did not have a case that the accident occurred while the vehicle was being used as a transport/commercial vehicle for carrying any passengers for hire or reward. Admittedly, the unfortunate accident occurred when the two pedestrians were knocked down by the driver of the vehicle. It is pointed out by the appellants that there was no material before the Tribunal to show that the vehicle was not road worthy or that the accident had occurred because of the so called violation of the policy conditions. However, it is conceded by the appellants

that the validity period of the permit had expired on May 19, 2004. In other words, there is no dispute that the offending vehicle was being plied without a permit According to the appellants, there is no taboo or prohibition in using the vehicle as a mode of transportation even though there was no valid permit to use it as a commercial vehicle. It may be true that the vehicle could not have been used as a "passenger carrying commercial vehicle" after the expiry of the permit. But no provision in the Motor Vehicles Act or the Rules be it Central or Kerala, interdicts the owner of a vehicle from using it as a mode of transport More importantly, the claim for compensation was not by any passenger who was being carried for hire or reward. The claim was by two pedestrians who would fall under the category of third party. The insurance company has no case that the policy did not cover the risk as against third parties. The only contention of the insurance company is that the owner of the vehicle would not be entitled to be indemnified, since the vehicle was put on the road after the expiry of the permit. It is thus contended by learned counsel for the appellants that in the absence of any material to show that the accident occurred because of the absence of a permit, the Tribunal was not justified in mulcting the owner and driver of the vehicle with the liability to pay the compensation.

9. Per contra, it is contended by M/S Jayasankar and George, who appear for the insurance company, that the policy certificate was issued for its use as a passenger carrying commercial vehicle, which presupposed that the vehicle did possess a permit to be used as a transport or commercial vehicle. The moment the vehicle ceased to have a valid permit to be used as a commercial vehicle, the policy certificate ceased to have its validity.

10. However, it is conceded by the learned counsel that the policy was valid as on the date of the accident. But according to the learned counsel the insurance company could not have been held liable to indemnify the owner in as much as he had violated the policy conditions. It is thus contended by the learned counsel that the Tribunal was amply justified in reserving the right of the company to recover the amount of compensation from the owner and driver of the offending vehicle.

11. Sub Section (1) of Section 66 of the Motor vehicles Act, which is relevant for our purpose is extracted hereunder:

S. 66. Necessity for permits- (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not.

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

12. It is postulated in the above Section that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

13. The vehicle involved in the accident in this case is a 1994 model Ambassador Car. It is beyond controversy that going by the condition stipulated in the "Tourist Taxi Permit'' issued in respect of this vehicle, the permit shall cease to be valid or operative if the vehicle is not replaced on completion of 9 years from the date of its initial registration.

14. Rule 82 of the Central Motor Vehicles Rules, 1989 deals with ''Tourist Permits''. Sub Rule (2) of Rule 82 stipulates that a tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of a motor cab and 8 years where the motor vehicle is other than a motor cab, unless the motor vehicle is replaced, (emphasis supplied). The period of nine years is to be computed from the date of initial registration of the vehicle.

15. As has been noticed already, the appellants did not have a case that the vehicle had a valid permit as on the date of the accident. It is conceded by them that the validity period of the permit had expired on May 19, 2004, two months prior to the accident. But according to the present owner-driver, who admittedly was in possession and ownership of the offending vehicle at the time of the accident he had never used the vehicle as a transport vehicle after the expiry of the permit.

16. According to this appellant, the claimants did not have a case that they suffered the injuries while they were travelling in the vehicle as passengers for hire or reward. Similarly, the insurance company did not have a case that at the time of the accident any passengers were being carried in the vehicle for hire or reward. The admitted case is that two pedestrians on the road were knocked down by the vehicle. In short, the legal representatives of the two pedestrians claimed compensation as third parties. More importantly, the insurance company did not have a case that the policy issued by it did not cover such a risk.

17. But the contention of the insurance company is that the vehicle could not have been used in a public place at all, once the permit to use it as a transport

vehicle expired. We are unable to accept the above contention for reasons more than one.

18. It may be true that Section 66 interdicts the owner of a vehicle from using it as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods except otherwise than in accordance with the terms and conditions stipulated in the permit. A closer look at the above provisions will show that the statutory thrust is against user of a vehicle as a "transport vehicle" without a permit. It cannot be disputed that insurance policy had been issued to cover the risk of passengers to be carried in the vehicle for hire or reward. Therefore, expiry of validity of the permit will only mean that the vehicle cannot be used as a transport vehicle any more, unless the permit is renewed. Simultaneously operation of the policy to cover the risk of passengers being carried for hire or reward, will also cease. But in our view the policy will nevertheless cover the risk of third parties, especially if it is not established that the vehicle was being used as a transport vehicle at the time of the accident. The words "whether or not such vehicle is actually carrying any passengers or goods" in Section 66 are obviously qua the permit and not the policy."

19. There is yet another aspect of the matter, Sub Rule 2 of Rule 82 of the Central Motor Vehicles Rules only postulates that a tourist permit shall be invalid from the date on which the motor vehicle covered by the permit completes 9 years, unless the motor vehicle is replaced. In other words, if the vehicle is replaced the validity period of the permit would continue to be operative. It may be true that the owner would not have been entitled to be indemnified, if the accident had occurred while the vehicle was being used as a transport/ commercial vehicle while carrying passengers for hire or reward. In such an eventuality, the company would have been eminently justified in contending for the position that there was violation of the policy conditions.

20. To a repeated query by the court as to whether there was any provision in the Act or the Rules which impelled the owner not to put the vehicle on road on expiry of the permit, learned counsel for the insurance company could not bring to our notice any such provision. Of course in this context, learned counsel invited our attention to Ext. A3, report prepared by the Assistant Motor Vehicles Inspector shortly after the accident In this report, the officer has, while giving details of the vehicle, indicated that the class of vehicle was ''All India Tourist Taxi''. Learned counsel submits that the report will undoubtedly show that as on the date of the accident, the vehicle was still being used as a passenger carrying commercial vehicle. At first blush, it may appear that there is some force in the above contention. But as we have noticed already, there is no case for the insurance company that any of the two victims were being carried in the vehicle for hire or reward. Similarly, the company did not have a case that at the time of the accident the vehicle was being used for transportation of any passengers for hire or reward. In that view of the matter, Ext. A3 will not come to the aid of the company.

21. We have carefully perused the various clauses in the policy certificate which is on record as Ext. B1. We have already referred to the contention raised by the learned counsel for the insurance company based on Sub Rule 2 of Rule 82. But no provision either in the Act, Rules or the policy has been brought to our notice which would indicate that validity of the policy certificate is coterminous with the validity of the permit issued under Rule 82 of the Central Motor Vehicles Rules.

22. There is yet another aspect of the matter, which in our view is crucial. In Ext. B1 policy certificate "Limit of Liability" is indicated thus-. Limit of the amount of the Company''s Liability u/s II-1(i) in respect of any one accident: as per Motor Vehicles Act, 1988.

Limit of the amount of the Company''s Liability u/s II-1 (ii) in respect of any one claim or series of claims arising out of one event: upto Rs. 750000.

Section II which is relevant for our purpose is extracted hereunder:

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle 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 vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the vehicle.

Provided Always That:-

(a) The Company shall not be liable in respect of death, injury, damage caused or arising beyond the limits of any carriage way or thoroughfare in connection with the bringing of the load to the insured vehicle for loading thereon or the taking away of the load from the insured vehicle after unloading there from.

(b) Except so far as is necessary to meet the requirements of the Motor Vehicle Act the Company shall not be liable in respect of death or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

(c) ....

(d) ....

(e) ....

(f) Except so far as is necessary to meet the requirements of the Motor Vehicles Act the company shall not be liable in respect of death and/or bodily injury to any person(s) who is/are not employee(s) of the insured and not being carried for hire or reward, other than the owner of the goods or representative of the owner of goods being carried in or upon or entering or mounting or alighting from the insured vehicle described in the Schedule of this Policy.

A perusal of the above clauses available in Ext. B1 policy will show that the company has undertaken the liability to third parties also. In any view of the matter, we have no hesitation to hold that the Tribunal was not justified in mulcting the owner and driver of the vehicle with the liability to pay the compensation, though of course the company was directed to pay it and recover the same from the latter. In that view of the matter, the award passed by the Tribunal to the extent it gives liberty to the insurance company to recover the amount of compensation from the owner and driver of the vehicle is set aside. In all other respects the award passed by the Tribunal is confirmed.

Appeals and writ petitions are allowed.

