

(1995) 01 KAR CK 0010

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2538 of 1994

Shanthabai and others

APPELLANT

Vs

Shekappa and others

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1995) 2 ACC 506 : (1995) ACJ 974 : (1995) 84 CompCas 796 :
(1995) ILR (Kar) 1637 : (1995) 2 KarLJ 268

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Gurushettappa, for the Appellant; S.P. Shankar, for the Respondent

Judgement

V.P. Mohan Kumar, J.—The question raised in this appeal relates to the extent of liability of the insurance company to indemnify the compensation payable under the Motor Vehicles Act to passengers travelling in a car which met with an accident.

2. One Bujangappa Gouda Patil, son of Ningangouda, died in a motor accident that took place on December 5, 1988, involving the jeep CTJ 2603 in which he was travelling. His wife and children claimed compensation. After contest, the Tribunal found that the accident was a result of rash and negligent driving and that the claimants are entitled to receive a sum of Rs. 1,53,000 as compensation after deducting the interim compensation paid. But, on the basis of the endorsement in the policy, the Tribunal held that the liability of the insurance company is confined to Rs. 10,000. The claimants have come up in appeal, challenging this part of the award.

3. When the appeal came up for hearing, I directed counsel for the insurance company to produce the notification dated February 23, 1978, in respect of passengers conveyed in a private car. The said notification reads thus :

"This has reference to the Supreme Court judgment in respect of Civil Appeal No.

2071 of 1968 stating that the "insurers" are not liable in respect of insured's liability for passengers carried in a private vehicle on the ground that section 95 of the Motor Vehicles Act does not require the insurance policy to cover such liability.

The matter was referred to the Tariff Advisory Committee and we now reproduce here below the circular dated February 13, 1978, issued by the Madras Regional Committee, the contents of which are self-explanatory. Similar circulars are being issued by all Regional Committees.

4. "In order to make the intention clear that the comprehensive private car policy covers passenger liability, the Tariff Advisory Committee have decided to amend clause 1 of section II, private car comprehensive policies, by incorporating the following wordings after the words "death of, or bodily injury, to any person" appearing on sheet 38 of the India Motor Tariff :

"including occupants carried in the motor car provided that such occupants are not carried for hire or reward".

5. Insurers are also advised that all existing policies may be deemed to incorporate this amendment automatically and the above decision is brought into force from March 25, 1977.

6. Insurers are requested to make the necessary amendments in their copies of the tariffs pending reprinting of the relevant tariff sheets."

7. Section II - Liability to third parties clause (1) of the Motor Vehicles Clause in respect of private car comprehensive policies may, therefore, be deleted and replaced by the following wordings :

(i) death of, or bodily injury to, any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

The above amendment may be cyclostyled at your end and attached to the Motor Vehicles Clause before issue of the private car comprehensive policy."

8. It is an admitted fact that the deceased was not travelling on hire. He was invited by the owner of travel in his jeep. It is held by this court, that, in such circumstances, as well, the insurer is liable to indemnify the owner (vide Indian Mercantile Insurance Co. v. Gowramma ILR 1979 Kant 887 and The New India Assurance Co. Ltd. Vs. H. Siddalinga Naika and Others,

9. In view of what is stated above, this appeal has to be allowed. I modify the award passed by the Tribunal and hold that the insurance company is also jointly and severally liable with respect to the entire amount due under the award. The appeal is allowed accordingly. No costs.