

(1994) 08 KL CK 0024
In the High Court Of Kerala

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Pandyat Kuniyil Pushpavally and Others

RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Insurance Act, 1938 — Section 95

Citation : (1996) 1 ACC 366

Hon'ble Judges : T.V. Ramakrishnan, J;K.J. Joseph, J

Bench : Division Bench

Judgement

T.V. Ramakrishnan, J.—This appeal by the insurer is against the award passed in M.A.C. No. 148 of 1982 on the file of the Motor Accidents Claims Tribunal, Kozhikode. The appellant was the 3rd respondent in the M.A.C. Respondents 1 to 5 are the claimants in the M.A.C. They are the widow, two children and of one Ravi, who died in a motor accident on 22.3.1982. Respondents 6 and 7 are respectively the owner and driver of lorry No. KLD 9741. Fifth respondent, wife of the 4th respondent and mother of the deceased died during the pendency of the appeal. Respondents 1 to 4 are the legal heirs of the deceased 5th respondent and nobody else have been impleaded as additional respondents on her death.

2. Ravi, a labourer doing masonry work as the means of his livelihood and aged 30 years, who was proved to be the sole bread winner of his family consisting of his young wife, two minor children and parents aged 75 and 65, met with an instantaneous death as he was crushed under the wheels of the lorry while he was walking by the side of the Kozhikode-Kannur public road in Badagara on the fateful day. According to the claimants lorry was being driven by the 7th respondent in a high speed rashly negligently at the time of the accident. The lorry after hitting the deceased dashed against a nearby electric post and ramped into the varanda of a shop nearby the road side before it stopped. Claimants alleged that the accident occurred solely due to the rash and negligent driving of the lorry by the 7th respondent, the driver. They also alleged that the deceased was a labourer earning an amount of Rs. 900/- per month. It was further alleged

that the deceased was the sole bread winner of the family and they were all depending on him for their livelihood. Neither the wife nor the parents were having any other source of income. In the circumstances, the claimants claimed a total amount of Rs. 1,50,000/- as compensation for the loss of life of Ravi, on whom they were depending upon for their livelihood. Claim was filed on 17.9.1982.

3. Respondents, while admitting the accident, denied the allegations of rashness and negligence contained in the M.A.C. They contended that the accident was an inevitable one. It was also contended that the quantum of compensation claimed is highly excessive. As third respondent the appellant denied the policy and the liability to pay any compensation to the claimants. Alternatively the appellant contended that if there is any liability it can only be to the statutory extent and no more.

4. In proof of the claim, the widow of the deceased was examined as P.W. 1. A merchant of the locality, who was an eye witness to the accident was examined as P.W. 2. To prove the age of the deceased, the claimants produced Ext. A1 dated 29.4.1970, the transfer certificate obtained from the school where the deceased had his education. Apart from Ext. A1, Exts. A2 to A4 outpatient tickets were also produced in evidence. The claimants also produced Ext. A5, a plan of the place of accident. On the side of the respondents no evidence was adduced.

5. On a consideration of the oral evidence of P.W. 2 and Ext. A5 plan of the place of accident, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the lorry by its driver. In the order under appeal, the Tribunal has specifically noted that there was practically no cross-examination of P.W. 2 on any of the material aspects spoken to by him in his chief-examination. The Tribunal, also observed that nothing was suggested in cross-examination by way of challenge against P.W. 2's version that the accident happened due to the rash and negligent driving of the lorry by its driver, second respondent, in the N.A.C. As already noted, nobody was examined on the side of the respondents and the driver of the lorry also shied away from the witness box. In the circumstances, the Tribunal was perfectly justified in accepting the version of P.W. 2 that at the time when he saw the vehicle, the lorry was driven in a high speed in a rash and negligent manner. It is clear that the contesting respondents have not even attempted to prove the specific case put forward by them that the accident was an inevitable accident. In the circumstances, we find no reason to interfere with the finding of the Tribunal that the accident was occurred due to the rash and negligent driving of the lorry by its driver.

6. As regards the claim for compensation P.W. 1, the widow; has given evidence in support of the case pleaded in the application that the deceased was the sole bread winner of the family and they were all depending on him for their livelihood. Ext. A1 transfer certificate was proved by her. Going by the relevant entry in Ext. A1, the deceased was 30 years of age at the time of the accident. In the M.A.C. the claimants have alleged that the deceased was a labourer earning

a monthly income of Rs. 900/-. In evidence P.W. 1 has stated that the deceased was doing masonry work and used to get Rs. 50/- per day. It was further stated that the deceased used to take only rupees 4 or 5 towards his personal expenses and used to spend Rs. 45/- for the maintenance of his family consisting of the claimants. She had stated that the parents of the deceased aged 75 and 65 are not having any source of income and the two minor children are studying in the school. She has also stated that the second petitioner is a sickly boy. To evidence that the second petitioner was taking treatment after and on she has produced Exts. A2 to A4 outpatient tickets obtained from the Government Hospital indicating that the child was treated from the hospital for primary complex. Nothing has been brought out to discredit the evidence given by P.W. 1 during the cross-examination. On a consideration of the evidence of P.W. 1, the Tribunal accepted the correctness of the version given by the claimants in the M.A.C. regarding the monthly income. Out of the monthly income 1/4th was deducted towards personal expenses of the deceased and the monthly contribution of the deceased was thus fixed at Rs. 675/- per month. Taking note of the age of the deceased and the age of the widow and the further fact that the children are minor aged 6 and 3 respectively, the Tribunal adopted a multiplier of 20 and calculated the monetary value of the dependency at Rs. 1,62,000/-. Since the claimants claimed only Rs. 1,50,000/- in the application, the Tribunal has awarded an amount of Rs. 1,50,000/- as compensation to the claimants. The Tribunal disallowed the claims made under the heads of compensation for loss of love and affection, compensation for pain and suffering etc. Compensation for pain and suffering was disallowed on the ground that the death was instantaneous. Compensation for loss of love and affection was not at all considered by the Tribunal, presumably because the claim was only for Rs. 1,50,000/- and that the entire amount was found to be allowable as compensation for loss of dependency alone. The Tribunal apportioned the amount among the claimants and directed the first petitioner-wife to be paid Rs. 45,000/- second and third petitioners Rs. 42,500/- each and Rs. 10,000/- each to petitioners 4 and 5.

7. In the light of the evidence given by P.W. 1 which has not been shown to be unreliable either on the basis of the facts and circumstances brought out in the cross-examination or otherwise, we feel that the Tribunal was justified in fixing the monthly income and monthly contribution of the deceased at Rs. 900/- and Rs. 675/- respectively. Similarly, taking note of the age of the dependents and the age of the deceased, we are also of the view that the adoption of the multiplier as 20 is not in any way irregular or illegal. The Tribunal has while fixing the monthly contribution rightly deducted 1/4th of the monthly income towards personal expenses of the deceased. On a careful consideration of the entire facts and circumstances of the case, we feel that the amount awarded is only just and reasonable and no interference is called for with the award passed by the Tribunal on merits also. As such we find no merit in the various grounds raised in appeal challenging the quantum of compensation fixed by the Tribunal.

8. Apart from challenging the findings regarding negligence of the driver of the insured vehicle involved in the accident and the quantum of compensation entered by the Tribunal, the appellant has raised a contention that its liability under the policy is only upto Rs. 50,000/- as regards third parties and as such the liability cast on the insurer in excess of Rs. 50,000/- as per the award is in any case illegal and unsustainable in law. It was also contended that the insurer was practically disabled from raising proper contentions and establishing such contentions by adducing necessary evidence in view of the fact that neither the claimants nor the owner have disclosed the policy particulars of the vehicle involved in the accident either voluntarily or in response to the application filed by the appellant before the Tribunal as I.A. No. 833 of 1983 calling upon the owner of the vehicle to furnish the policy particulars. As such it was contended that the liability cast on the insurer in excess of the amount of Rs. 50,000/- is liable to be set aside.

9. In the appeal along with CMP. No. 13741 of 1986 filed for stay of execution of the award, the appellant has stated that it is producing a photocopy of the office copy of the policy having No. 4226606096 as the relevant policy relating to the offending vehicle. In the memorandum of appeal and the affidavit filed in support of C.M.P. No. 13741 of 1986, it was alleged that inspite of earnest attempts to trace out the policy, it was not possible for the appellant to trace out the same till the award was passed and it was only thereafter the policy was found out and it is in those circumstances the policy is being produced alongwith the appeal. It was also asserted that inspite of I.A. No. 333 of 1988 filed by the appellant before the Tribunal, neither the claimants nor the owner have given any particulars regarding the policy and that was the reason why the insurer was not able to produce the policy before the Tribunal. In the circumstances, it was prayed that the photocopy of the office copy of the policy produced may be accepted as additional evidence in the case. Relying upon the terms and conditions contained in the policy as if that same was produced already it was contended that the liability to third parties is limited to the extent of statutory requirement u/s 95(2) of the Insurance Act, i.e. Rs. 50,000/- and that the appellant is ready and willing to deposit the same in discharge of its liability under the policy.

10. On a scrutiny of the records, we find that the reasons stated by the appellant for not producing the policy before the Tribunal and pleading specifically the limit of its liability are not true and correct. For, we find that the claimants have filed an application, LA. No. 639 of 1985 calling upon the appellant to produce the policy with connected records giving the number of the policy as 4226606096. In that application we find that the Tribunal has passed an order on 29.6.1985 to the following effect:

Insurance admitted by R3. I.A. closed.

This is an order passed in an interlocutory application in the proceedings as early as on 29.6.1985. It is obviously based upon the order that the Tribunal has made

the insurer liable for the entire amount of compensation as per the award passed on 10.1.1986 which is under challenge in this appeal. It is also relevant to note in this connection that long prior to the passing of the above order, the Tribunal has closed LA. No. 833 of 1983 filed by the insurer to compel the owner to produce the original policy or to disclose the policy particulars, on 24.6.1984. It was thereafter the claimants have filed LA. No. 639 of 1985. Similarly we find that the first respondent owner of the offending vehicle has also filed an application LA. No. 1025 of 1985 calling upon the appellant to produce the copy of the policy of the vehicle involved in the accident giving the policy number as 4226606096 and stating that he has lost the original policy issued to him. The said application was filed on 9.7.1985. The Tribunal ordered notice on 9.7.1985 and posted the same on 10.7.1985. On 10.7.1985 the Tribunal passed an order to the following effect:

Notice given. Heard. Insurance Company will produce the documents.

Application was posted to 30.7.1985. No documents were produced by the appellant. The application was thereafter posted for production of documents and ultimately it was closed on 5.9.1985 noting that "documents not produced. LA. closed". In the light of the applications filed by the owner of the vehicle and the claimants before the Tribunal disclosing the number of the policy and calling upon the appellant to produce the office copy of the policy and the orders passed in those applications, we find absolutely no ground to admit the photocopy of the policy stated to have been produced alongwith the stay petition but produced only on 29.7.1994 after the appeal was heard and posted for orders.

11. In this connection, we may also refer to an affidavit filed by the learned Counsel for the appellant on 13.7.1994, after the appeal was partly heard. It is an affidavit of the Advocate who was appearing for the appellant-Insurance Company before the Tribunal. The Advocate has stated in his affidavit that he has not been given notice in LA. No. 639 of 1985 filed by the claimants before the Tribunal and that notice was in fact given to another Counsel by name Sachindran. He has also stated that he has not admitted the policy as noted by the Tribunal in its order passed in LA. No. 639 of 1985. We find that the affidavit was signed by the deponent on 17.8.1990. However, the affidavit was actually filed as already noted, only on 13.7.1994. Even accepting what has been stated in the affidavit is correct, we do not think that we will be justified in accepting the photocopy of the policy produced by the appellant in appeal and that too only after the hearing of the appeal was over in the light of the disclosure of the policy particulars made by the owner of the vehicle in his application LA. No. 1025 of 1985. We find that sufficient time was granted on that application for the appellant to produce the policy pursuant to the order passed in that application also. In these circumstances, we find that the appellant has not made out sufficient grounds to admit the photocopy of the policy produced in the appeal as additional evidence in the case. We would accordingly reject the request of the appellant to that effect. As such in the facts and circumstances of the case we

find that the Tribunal was justified in making the appellant liable for the entire amount covered by the award. We have already found that the award is not liable to be interfered with on any of the other grounds raised in the memorandum of appeal.

In the circumstances, the appeal fails and it is dismissed. No order as to costs.