

(1990) 10 KL CK 0019
In the High Court Of Kerala

The New India Assurance Co. Ltd.

APPELLANT

Vs

N. Pataramu and Others

RESPONDENT

Date of Decision : 01-10-1990

Acts Referred:

Evidence Act, 1872 — Section 64, 65, 66
Motor Vehicles Act, 1988 — Section 146, 147

Citation : (1991) 2 ACC 117

Hon'ble Judges : P.K. Shamsuddin, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Judgement

K.P. Radhakrishna Menon, J.—The Insurance Company, the third respondent in O.P. (MV) No. 1218/85 before the M.A.C.T. Quilon is the appellant. The order of the Tribunal making the Insurance Company liable for the entire compensation awarded against the owner as also the driver of the vehicle involved in the accident is under challenge.

2. The learned Counsel for the appellant argues that the liability of the Insurance Company is limited to the extent of Rs. 15,000/- and that it is so can be seen from the "motor policy" issued on 11-5-1983. The counsel in this connection made specific reference to the endorsement in the policy under the head "limits of liability" namely, limit of the amount of Company's liability u/s II-I(i) in respect of any one accident-such amount as is necessary to meet the requirements of MV Act 1939 and limit of the amount of the company's liability u/s II-I(ii) in respect of any one claim or series of claims arising out of the one event Rs. 50,000/-. The Tribunal below therefore, the counsel submits, has gone wrong in making the appellant insurance company liable for the entire compensation amount of Rs. 71,000/- with 6% interest from 27-2-1984 till 3 months after the date of award and 18% interest thereafter till realisation.

3. The learned Counsel representing the owner of the vehicle, the sixth respondent, on the other hand argues that though under the insurance policy the liability of the insurance company is limited, the insurance company must be

deemed to be liable for the entire amount in view of the provisions contained in Section 147 of The Motor Vehicles Act, 1988, for short, The 1988 Act. It is all the more so, it is further contended, because the policy of insurance after the coming into force of The 1988 Act, must be treated as one issued u/s 147. If that be the position, it should be held that the Tribunal has rightly fastened the entire liability on the appellant insurance company the counsel submits.

4. The question thus arising for consideration is; On the facts and circumstances of the case, could it be said that the liability of the appellant insurance company requires to be determined u/s 147?

5. To find an answer to the question we have to consider the scheme of Sections 146 and 147 of Chapter XI of The 1988 Act, which has as its caption "Insurance of Motor Vehicles Against Third Party Risks". Section 146 says that no person shall use, except as passenger, or cause or allow any other persons to use, a motor vehicle in a public place unless he has taken a policy of insurance complying with the requirements of Chapter XI. Section 147 prescribes "the requirements of policies and limits of liability". It is thus clear from these sections that no person, except as a passenger, shall use or cause or allow any other person to use motor vehicle in public place unless it be is in custody of a current policy of insurance complying with the requirements of chapter XI of The 1988 Act. To put it differently after the commencement of the 1988 Act no person, except as a passenger, can use or allow another person to use a motor vehicle in public place unless there is in force in relation to the use of the of the vehicle by that person or the person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. It should in this connection be noted that the liability of the insurer under the policy of insurance issued u/s 147 is the actual amount of liability incurred i.e. the liability is unlimited except in respect of damage to any property of a third party, a limit of rupees six thousand. That means the contract evidenced by policy of insurance, with limited liability and in force on the commencement of The 1988 Act, in the absence of a saving clause, would get automatically terminated. So we have to see whether the 1988 Act contains any such saving clause. A reference in this connection to the proviso to Sub-section 2 of Section 147 is profitable. We shall now read this proviso:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

This proviso thus gives life to such insurance policies which were in force on the commencement of The 1988 Act for a limited period. In view of this provision a policy of insurance issued with any limited liability and in force on the commencement of the 1988 Act will continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

6. Having understood the law thus, let us see whether the Tribunal was right in making the appellant liable for the entire a compensation amount awarded against the owner of the vehicle placing the claim u/s 147? Our answer is No: because, there is no provision in The 1988 Act treating a policy of insurance issued with any limited liability and in force before its commencement as one issued u/s 147. On the other hand The 1988 Act recognises the effectiveness of such policies for a specified period even after its commencement. The argument of the counsel that the appellant insurance company has rightly been made liable for the entire compensation amount therefore is liable to be rejected. In fact this question does not arise for consideration because, even according to the owner of the vehicle the policy of insurance expired on 10.3.1984, much prior to the coming into force of The 1988 Act. The question aforesaid therefore is answered in favour of the appellant. The liability of the appellant accordingly is limited to the extent specified in the policy of insurance namely Rs. 15,000/-.

7. The counsel for the owner of the vehicle then argued that in as much as the appellant failed to prove the policy of insurance issued with limited liability in a manner known to law, the appellant shall not be permitted to rely on the same to substantiate its case that it cannot be made liable for the entire compensation amount awarded against the owner. In support of this argument the counsel referred us to the decision in The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others, . A Division Bench of The Punjab and Haryana High Court considered the scope of Section 64, 65 and 66 of The Evidence Act and held thus:

The insurer was required u/s 66 of the Act to have previously given a notice to the owner to produce the original policy of insurance and on his failure to do so it could have produced its copy under Clause (a) of Section 65 *ibid*. None of the steps as contemplated by the Code or the Act was, however, taken by the insurer.

It could not, therefore, at a late stage of the proceedings simply shave a copy of the policy of insurance and mark it as an exhibit through the statement of its counsel question No. (1) "Whether the policy of insurance could be proved by production of its copy Ext.R-1 unless a case was made out for production of secondary evidence within the meaning of Section 65 of the Indian Evidence Act 1872 is, therefore, answered in the negative".

On going through the facts stated in the case it can be seen that the insurer there was relying on a copy of the policy of insurance to substantiate its case as against the claimant. The High Court was of the view that failure on the part of the insurer to take the steps contemplated u/s 66 of The Evidence Act for the production of the original policy of insurance disentitles it to get the copy of the policy marked in the proceedings. This decision, in our view has no application here. The owner of the vehicle who admittedly is in custody of the original policy of insurance, however cannot oppose the making of the copy of the insurance policy on the ground that the insurer failed to take the steps contemplated u/s 66 of The Evidence act. If that be the position, the above contention of the

counsel is also liable to be rejected.

8. No other question arises for consideration. The award under the circumstances requires to be modified fixing the liability of the insurance company at Rs. 15,000/- only. The insurance company has already deposited a sum of Rs. 20,000/- as directed by this court. The counsel for the appellant submits that the claimant has already withdrawn that amount. Under the circumstances we make it clear that there is no need for the appellant insurance company to pay any more amount to the claimants under the award in dispute.

The appeal is allowed to the extent indicated above.