
(2014) 06 KL CK 0113
In the High Court Of Kerala
Case No : MACA No. 1104 of 2010

The New India Assurance Co. Ltd.

APPELLANT

Vs

P. Thomas

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Insurance Act, 1938 — Section 64-UC, 64-UC(1)
Motor Vehicles Act, 1988 — Section 147(1), 147(1)(b)(i), 147(1)(b)(ii), 147(1)(b)(i),
149

Citation : (2014) 4 ACC 494 : (2015) ACJ 2767 : (2014) 2 KHC 777 : (2014) 3 KLJ 255 : (2014) 3 KLT 119

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : V.P.K. Panicker, Advocate for the Appellant; R.T. Pradeep, Advocate for R-1, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Kemal Pasha, J.—In the case of an award passed u/s 163A of the Motor Vehicles Act in respect of injuries sustained to a pillion rider of a motor bike as a gratuitous passenger, whether the insurer who had issued a normal "act only policy" without obtaining any extra premium for coverage of the pillion rider, be mulcted with the liability to compensate the pillion rider who sustained injury out of the use of such motor cycle or to indemnify the registered owner of the said motor bike, is the short question that comes up for consideration here.

2. The petitioner in O.P.(MV) No. 1150/2003 of the Motor Accidents Claims Tribunal, Neyyattinkara while travelling as a pillion rider by a motor bike sustained injuries out of the use of a motor bike. He preferred a claim initially u/s 166 which was later amended as one u/s 163A of the Motor Vehicles Act. The Tribunal has passed an award granting an amount of 39,800/- with interest as compensation to the petitioner and ordered the appellant herein, who was the 2nd respondent in the OP, to pay the said amount. The insurer has come up in

appeal.

3. Heard the learned counsel for the appellant Sri.V.P.K. Panicker and learned counsel for the 2nd respondent Sri.R.T.Pradeep.

4. The learned counsel for the 2nd respondent has strenuously attempted to canvas an argument that the decision of the Apex court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, is per incuriam of a notification issued by the Insurance Tariff Advisory Committee, which came into force with effect from 25.03.1977, wherein it was resolved that death of or bodily injuries to any person, including person conveyed in or on the motor cycle would be covered provided such person is not carried for hire or reward. It has also been contended that the non-obstante clause incorporated in Section 163A of the Motor Vehicles Act takes out the matter from the category of the coverage specified u/s 147(1) of the Motor Vehicles Act.

5. Relating to the first point, it has to be noted that the Insurance Tariff Advisory Committee gets powers to act through Part II-B of the Insurance Act, 1938. As per Section 64-UC(1),

The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers.

The proviso to Section 64-UC(1) says,

Provided that the Authority may permit any insurer to offer, during such period being not more than two years but which may be extended by periods of not more than two years at a time and subject to such conditions as may be specified by it, rates, advantages, terms or conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if it is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.

6. According to the learned counsel for the appellant, the said Committee has merely recommendatory powers, and such powers cannot be used to legislate. It is also argued that the decisions that may be taken by such a Committee cannot make any of the provisions of the statute otiose. On going through Section 147(1)b(i) of the Motor Vehicles Act, it is evident that the said provision is applicable to all motor vehicles other than public service vehicles. It is trite law that the term "injury to any person" as contained in Section 147(1)(b)(i) is confined to third parties alone. That is evident from the subsequent wording in the said provision "including owner of the goods or his authorised representative carried in the vehicle". Therefore, the requirements of the insurance policy for coverage is confined to owner of the goods or his authorised representative

carried in the vehicle in the case of motor vehicles other than public service vehicles. In the case of passengers of public service vehicles, the requirement is one as contemplated u/s 147(1)(b)(ii) of the Motor Vehicles Act. It is based on the said provisions, it was held in *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, that in the case of an "act only policy", a gratuitous passenger or the pillion rider is not covered, unless extra premium for such coverage is paid. In *National Insurance Company Limited Vs. Balan @ Balakrishnan and Others* [2008 (1) KHC 202] also, it was held that in the case of an "act only policy", there is no coverage for the gratuitous passenger of a private vehicle, unless extra premium for such coverage is paid.

7. In *National Insurance Co. Ltd. Vs. Parvathneni and Another*, wherein it was held that in cases where the insurance company has no liability to pay the compensation, it cannot be compelled to make the payment with a direction to recover it later from the owner of the vehicle. A Full Bench of this Court in *Oriental Insurance Co. Ltd. Vs. Joseph*, also has held as follows:

By virtue of sub-s.(4) of S. 149, Court has to see whether there has to be a direction to pay and recover. If there are violations of the terms of the policy, the question of pay and recover would arise. When the case of the deceased is not covered under the policy, the question of pay and recover would not arise.

8. Another argument may come up that when the insurance company is entitled or empowered to collect such extra premium for covering the liability of a gratuitous passenger or pillion rider in the case of an "act only policy", whether such a contract amounts to contracting out. In such a situation, the proviso to Section 64-UC of the Insurance Act will come into play. The said proviso permits the Insurance Tariff Advisory Committee to enable the insurance companies to give a wider coverage of the policy. In the light of the said proviso to Section 64-UC of the Insurance Act, such a contract cannot be considered as contracting out.

9. It cannot be said that the notification issued by the Insurance Tariff Advisory Committee has the force of law, whereas the said Committee is empowered to permit the insurance companies to obtain extra premium or to fix rates for giving a wider coverage. The decisions that may be taken by such a Committee cannot make any of the provisions of the Motor Vehicles Act, otiose. Therefore, it is not correct to say that the decision in *Tilak Singh's* case is per incuriam to the said notification.

10. Regarding the next aspect, it has to be noted that in *United India Insurance Company Limited Vs. Anil Kumar and Others*, this Court has held that the non-obstante clause in sub-section (1) of Section 163A of the Motor Vehicles Act is only to be understood in the sense that it is to the extent of making the owner or insurer of the vehicle liable to pay compensation as per the second schedule. According to the learned counsel for the 2nd respondent, the non-obstante clause in sub-section (1) of Section 163A of the Motor Vehicles Act enables a passenger, who sustains injury out of the use of a motor vehicle, to get

compensation from the insurer even in the case of an "act only policy" even without payment of any extra premium by the insured.

11. It is evident from the use of terms "the owner of the motor vehicle or the authorised insurer" in sub-section (1) to Section 163A that the intention is only with regard to make the owner or insurer of the vehicle liable to pay compensation without proof of negligence. If as a matter of fact, the intention of the legislature was to make the insurer liable in all cases irrespective of whether they were covered or not as per the policy to pay compensation u/s 163A of the Motor Vehicles Act, the term "the owner of the motor vehicle" should not have been incorporated therein. When the liability is thrust upon "the owner of the motor vehicle or the authorised insurer" u/s 163A, it cannot be said that in all cases the insurer should be made liable. In cases wherein there is no coverage, the insurer cannot be made liable even u/s 163A of the Motor Vehicles Act. The non-obstante clause is clearly confined to make either the owner or the insurer compulsorily liable to pay compensation under the structured formula basis.

12. Here in this particular case, the policy issued was only an "act only policy", and no extra premium was collected by the insurer to give a wider coverage to cover gratuitous passenger or the pillion rider. Matters being so, any question relating to the liability of the insurer does not arise at all. The Tribunal has erred in mulcting the appellant/insurer with liability in this case. The entire amount granted by the Tribunal as compensation to the 2nd respondent, ought to have been paid by the first respondent, who was the registered owner of the vehicle, who was riding the motor bike and not by the insurer. Therefore, the impugned award requires modification to that effect.

13. In the result, this appeal is allowed and the appellant is exonerated from any liability to meet the award amount.

The amount of compensation fixed by the Tribunal in the impugned award shall be paid by the first respondent herein. The amount deposited by the appellant/insurer u/s 173(1) of the Motor Vehicles Act is ordered to be reimbursed to the appellant.