(1995) 05 KL CK 0010

In the High Court Of Kerala

Case No : M.F.A. No. 296 of 1995

United India Ins. Co. Ltd — APPELLANT

Vs

Appukuttan and Anr — RESPONDENT

Date of Decision : 31-05-1995

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (1995) 1 KLJ 758

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : Siby Mathew and Wilson Urmese, for the Appellant;

Judgement

Thomas, J.—This appeal is by in insurance company in challenge of a direction contained in the award of a Motor Accidents Claims Tribunal (Claims Tribunal for short) that the compensation amount granted should be paid by the insurance company. The claim was made in respect of a motor accident which happened on 2-6-1993. Claimant was the pillion rider on a scooter (KRB 4171) which collided with another vehicle. He fell down and sustained some injuries. He claimed compensation from the rider of the scooter as well as from his insurer.

2. Two points were raised by the appellant. One was that the first respondent had no licence to ride the scooter and the other was that the pillion rider was not a third party and hence his risk was not covered by the insurance policy. The first contention does not appear, to have been pursued before the Claims Tribunal and the second point was found against the appellant. Accordingly, the Claims Tribunal passed the award in a sum of Rs. 26,140/- together with interest at the rate of 12% per annum from the date of claim and directed the appellant company to pay the amount to the claimant.

3. The only contention raised before us is that in view of the decision of a Division Bench of this Court in Velunni v. Vellakutty (1989) (2) KLT 227 the insurance company cannot be fastened with liability to pay compensation in

respect of a pillion rider of the motorcycle.

4. The said contention is advanced on the premise that the insurance policy is "a policy for act liability" and hence the limit of liability laid down in the Motor Vehicles Act would apply. The decision in Valunni''s case was rendered in a case where the accident happened before the coming into force of the Motor Vehicles Act, 1988. Then it was covered by Sec. 95 of the Motor Vehicles Act, 1939. In the proviso (ii) to Sec. 95(1) of the said Act a policy of insurance was not required to Cover liability in respect of death or bodily injury to persons who were carried in or upon the vehicle at the time of occurrence. It was in consideration of the said proviso that the Division Bench has held in Velunni''s case that a pillion rider of a motorcycle is not required by statute to be covered for the risk regarding bodily injuries. But the position has completely been changed when the new Motor Vehicles Act, 1988 came into force. In Sec. 147 of the new Act which corresponds to Sec. 95 of the old Act there is no limit in certain cases as contained in clause (ii) of the old Act. The corresponding proviso in the old Act contained three clauses whereas now there are only two clauses. What was dropped in the new Act is the clause which excluded the coverage for death or bodily injury to persons carried in or upon the vehicle. That means such liability cannot now be excluded from the policy, The result is when a policy of insurance "is an act policy", it does not necessarily mean that the insurance company will stand absolved from the liability in respect of the pillion rider of a motorcycle.

For the aforesaid reasons, we are not inclined to interfere, though that is not the reason stated by the Claims Tribunal for fastening the appellant with liability.

