

(1990) 06 MAD CK 0049

In the Madras High Court

Case No : C.M.A. No's. 479 to 482 of 1984

United India Insurance Co. Ltd.

APPELLANT

Vs

Angammal and Others

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(b)(ii)

Citation : (1991) 2 ACC 386 : (1991) ACJ 449

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; Aru Sellambayiram, A.K. Kumaraswami, Veeraswamy, P. Sukumar and Venkateswaran, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, J.—These appeals, at the instance of the United India Insurance Co. Ltd., have been preferred against the common award of the Motor Accidents Claims Tribunal (Additional District Judge), Erode, in M.C.O.P. Nos. 120 and 114 of 1983 and 121 and 106 of 1982. On 25.2.1982, the bus bearing registration No. TNV 9698 belonging to K.O. Chinnasami (the second respondent in C.M.A. Nos. 479 and 482 of 1984, third respondent in C.M.A. No. 480 of 1984 and fourth respondent in C.M.A. No. 481 of 1984) driven by one Pongiannan, the husband of the first respondent in C.M.A. No. 480 of 1984 and father of the second respondent therein, met with an accident at Seemankuzhi, while it was proceeding from Coimbatore to Bannari and in that accident, the driver of the bus and some passengers died and other passengers received injuries. One Duraiswami, who was a passenger in the bus, died and his mother Angammal, the first respondent in C.M.A No. 479 of 1984, filed M.C.O.P. No. 120 of 1983 praying for the award of compensation in a sum of Rs. 45,000/- in respect of the death of her son Duraiswami. Respondent Nos. 1 and 2 in C.M.A No. 480 of 1984, who are the wife and minor daughter of the deceased driver of the bus, claimed in M.C.O.P. No. 114 of 1983 a sum of Rs. 1,00,000/- by way of

compensation in respect of the death of the driver Pongiannan in the accident; likewise, with reference to the death of another passenger of the name of Chellappan in that accident, his wife and minor daughter and son, who are respondent Nos. 1 to 3 in C.M.A. No. 481 of 1984, claimed in M.C.O.P. No. 121 of 1982 compensation in a sum of Rs. 1,00,000/-. The first respondent in C.M.A. No. 482 of 1984, who sustained injuries in that accident, in M.C.O.P. No. 106 of 1982, prayed that compensation in a sum of Rs. 30,000/- should be awarded to her for the injuries. These claim petitions were resisted by the owner of the bus and the appellant insurance company on the ground that there was no negligence on the part of the driver of the bus and that in spite of the best efforts of the driver to avert the accident, it could not be so done and that the compensation prayed for was excessive and on the high side. An additional defence that was raised by the appellant was to the effect that the vehicle was registered to carry only 54 passengers, but in fact it carried more, resulting in the violation of one of the conditions of the policy, rendering the insurance company not liable to pay the compensation as claimed and that in respect of the passengers, who had either lost their lives or sustained injuries, the maximum amount of compensation payable would only be Rs. 5,000/- per head, subject to an overall statutory limit of Rs. 50,000/- and no liability in excess of Rs. 50,000/- could be fastened on the appellant in respect of all the claims arising out of the accident.

2. Before the Tribunal, on behalf of the claimants, the respondents in these appeals as well as other claimants Exhs. A-1 to A-40 were filed and PWs 1 to 19 were examined, while on behalf of the appellant as well as the owner of the bus, Exhs. B-1 to B-5 were marked and RWs 1 to 3 gave evidence. On a consideration of the oral as well as the documentary evidence so let in the Tribunal found that the accident was the outcome of the rash and negligent driving of the bus by its driver, that the appellant insurance company had not established that there was a breach of one of the policy conditions by carrying more passengers than the registered capacity, that the claim put forward by the appellant for the limitation of its liability to Rs. 5,000/- per passenger, dead or injured, subject to an overall liability of Rs. 50,000/- could not be accepted and that the first respondent in C.M.A. No. 479 of 1984, respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984, respondent Nos. 1 to 3 in C.M.A. No. 481 of 1984 and the first respondent in C.M.A. No. 482 of 1984 were entitled to compensation in sums of Rs. 31,500/-, Rs. 41,580/-, Rs. 36,000/- and Rs. 8,850/- respectively. It is the correctness of the award of compensation in the manner done by the Tribunal that is questioned in these appeals with reference to the limits of the liability of the appellant under the provisions of Motor Vehicles Act (hereinafter referred to as "the Act") while accepting its liability to the tune of Rs. 5,000/- each in C.M.A. Nos. 479, 481 and 482 of 1984.

3. Learned counsel for the appellant insurance company contended that u/s 95(2) (b)(ii) (2) and (4) of the Act, the overall liability in respect of the bus registered to carry 54 passengers would be Rs. 75,000/- and for the death or bodily injury

of an individual passenger, the limit would only be Rs. 5,000/- per passenger and the Tribunal was, therefore, in error in having awarded compensation in excess of that amount to the claimants, the respondents in these appeals. Strong reliance in this connection was also placed upon the decision reported in *M.K. Kunhimohammed v. P.A. Ahmedkutty* 1987 ACJ 872 (SC). It was also further submitted that in so far as the claim for compensation made by respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984 was concerned, as deceased Pongiannan was a driver, under the provisions of the Workmen's Compensation Act, the compensation awardable in respect of his death would only be Rs. 19,200/- based on the salary earned by him at the time of his death and no more. In answer to this, counsel appearing for the contesting claimants, the respondents in these appeals, referring to the terms of the policy under Exh. B-4, pointed out that there was no restriction limiting the liability of the appellant to what has been statutorily provided, but that on the contrary, the appellant had undertaken to cover a larger liability and, therefore, the appellant cannot be heard to put forward any limitation of its liability for payment of compensation in respect of either the death of the passengers or bodily injury sustained by them as a result of the accident. Referring to the decision in *M.K. Kunhimohammed v. P.A. Ahmedkutty* 1987 ACJ 872 (SC) it was pointed out that in that case, there was a specific provision in the policy limiting the insurer's liability to that provided u/s 95(2)(b)(ii) (2) and (4) of the Act and that cannot be relied on in this case, where the terms of the policy are different. Regarding the claim for compensation made by the wife and daughter of the deceased driver, their learned counsel pointed out that the appellant had agreed to indemnify the owner of the bus against any liability in respect of the death or bodily injury arising under the common law as per endorsement No. 16 found in the policy and, therefore, there cannot be any restriction on the liability of the appellant only to the tune of Rs. 19,200/- as accepted by the appellant.

4. Before embarking upon a consideration of the submission so made, it would be first necessary to bear in mind that the limits of the liability of the appellant have to be determined not only in the light of the statutory provisions under the Act, but also in the light of the terms of the policy. Exh. B-4 is the policy which covered the bus during the period 28.8.1981 to 27.8.1982, while the accident took place on 25.2.1982. In the policy, in the column relating to the limits of the liability of the company u/s II (1)(i) Section II(1)(a), such liability is stated to be unlimited. With reference to the limits of the liability of the company u/s II(1)(ii)/ Section II (1)(b) in respect of any one claim or series of claims arising out of any one event, the figure mentioned is Rs. 1,50,000/-. Section II(1)(i) of the policy states that subject to the limits of liability, the company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle. Proviso (b) is in the nature of an exception with reference to the coverage of the liability in respect of death of or bodily injury to

any person in the employment of the insured arising out of and in the course of such employment. Proviso (c) provides that except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939 in relation to liability under the Workmen's Compensation Act, 1923 the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event, out of which any claim arises. It would also be relevant in this connection to notice endorsement No. 16 in and by which the company had agreed to indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, Fatal Accidents Act, 1855 or at common law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading and/or unloading) whilst engaged in the service of the insured in such occupation in connection with any motor vehicle and will in addition be responsible for all costs and expenses incurred with its written consent. In these cases, with the exception of the claim made in M.C.O.P. No. 114 of 1983 relating to C.M.A. No. 480 of 1984 the others relate to death of two passengers and injury sustained by one. Under the terms of the policy, the appellant had agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to any person caused by or arising out of the use of the motor vehicle. The only exception is under proviso (b) whereunder the insurance company had excluded its liability in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment and proviso (c) carves out another exception to this in that it states that except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939 in relation to liability under the Workmen's Compensation Act, 1923 the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises. On a consideration of the terms of the policy which governed the liability of the appellant at the time when the accident took place, it follows that even as regards death or bodily injury to the passengers, the appellant had undertaken to indemnify the insured against an unlimited liability and it cannot, therefore, be heard to contend that its liability should be restricted to Rs. 5,000/- in respect of the dead or injured passenger, as the case may be. The reliance placed upon the decision in M.K. Kunhimohammed v. P.A. Ahmedkutty 1987 ACJ 872 (SC) will not also avail the appellant, for, it is found in that case, even under the terms of the policy, there was a specific restriction of the insurer's liability to that provided u/s 95(2)(b)(ii) (2) and (4) of the Act, such is not the case here and, therefore, that decision will (Sic. not) have any application whatever. Likewise, with reference to the limitation of the liability in respect of the death of the driver also, by reasons of endorsement No. 16

referred to earlier, the appellant had agreed to indemnify the insured even as against the liability that may arise under the common law and u/s 110-AA of the Act the dependants are given a choice of filing a claim petition before the Motor Accidents Claims Tribunal or the Commissioner for Workmen's Compensation, as the case may be, but not before both. In this case, it is not suggested that respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984 had obtained any benefits under the provisions of the Workmen's Compensation Act by taking appropriate proceedings in that regard. Indeed, it is seen from column 17 of the petition in M.C.O.P. No. 114 of 1983 that respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984 had not preferred any other claim and in view of the appellant having agreed to cover a larger liability even under the common law, it cannot be stated that the Tribunal was in error in awarding compensation to respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984 in excess of Rs. 19,200/- accepted by the appellant. The aforesaid aspects came up for consideration in *United India Insurance Co. Ltd. v. P. Chinnappa* C.M.A. Nos. 198 and 641 of 1984; decided on 13.6.1990 and the view had been taken that the liability of the insurance company under common law would be higher than that under the provisions of the Workmen's Compensation Act and the insurance company would be liable for the larger amount under the common law and that would squarely apply in this case also. No argument was raised on the quantum of compensation as indeed it could not also be raised by the appellant. Thus, on a careful consideration of the facts and circumstances and also the provisions of the Act and the terms of the policy, it has to be held that the Tribunal was quite right in holding that the appellant was liable to pay the first respondent in C.M.A. No. 479 of 1984, respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984, respondent Nos. 1 to 3 in C.M.A. No. 481 of 1984 and the first respondent in C.M.A. No. 482 of 1984 compensation amounts in sums of Rs. 31,500/-, Rs. 41,580/-, Rs. 36,000/- and Rs. 8,850/- respectively. Consequently, all the appeals fail and are dismissed with costs of the first respondent in C.M.A. No. 479 of 1984, respondent Nos. 1 and 2 in C.M.A. No. 480 of 1984, respondent Nos. 1 to 3 in C.M.A. No. 481 of 1984 and the first respondent in C.M.A. No. 482 of 1984.