(2003) 03 KL CK 0051

In the High Court Of Kerala

Case No : M.F.A. No. 1482 of 1996 & MFA No. 1482 of 1996

United India Insurance Co. Ltd. APPELLANT

Vs

K.S. Suneethi Ramachandran and Others RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2004) ACJ 824 : AIR 2003 Ker 237 : (2004) 1 ILR (Ker) 154

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Thankappan, J

Bench : Division Bench

Advocate : D.S. Warrier and Mary Anita Jose, for the Appellant; Tom Jose, for the Respondent

Final Decision : Dismissed

Judgement

Abdul Gafoor, J.—The insurer has come up with this appeal contending that the pillion rider who died in the motor accident is not entitled to be compensated by the insurer.

2. It is contended that the very intention of the statute, as indiscernible from Section 147 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), is that no person other than those specifically mentioned in that statutory provision is liable to be covered by an Act policy. This is clear from the decisions reported in New India Assurance Co. Ltd. v. Asha Rani, AIR 2002 SCW 5259 : New India Assurance Co. Ltd. Vs. Asha Rani and Others, and Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., . The Supreme Court has considered the subsequent amendment to the Motor Vehicles Act, 1988 to bring the owner of the goods or the representative of the owner of the goods carried in a goods vehicle within the coverage of an Act policy and has held that when the Act did not intend to bring in a class of persons, it cannot be taken that such persons are covered by the statutory policy. These are cases concerning passengers carried in a goods vehicle before the amendment to Section 147(1)(b)(i) of the Act.

3. The case on hand is, on the other hand, one concerning a pillion rider on a two wheeler. A two wheeler is meant to carry another also as a pillion rider. Necessarily, the pillion rider cannot be taken as a fare paying passenger. Considering such a situation, a Division Bench of this Court in the decision reported in United India Insurance Co. Ltd. v. Appukuttan 1995 (1) KLT 807 : (1996 AIHC 933) has made it clear that "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 a pillion rider of a motorcycle."

4. Thus, when there is a binding decision with reference to the insurer owing to a pillion rider, necessarily, the observations contained in the decision relating to a passenger carried in a goods vehicle cannot have any relevance in the fact situation. Moreover, in the decision reported in Oriental Insurance Co. Ltd. v. Ajayakumar 1999 (2) KLT 886 (FB), the decision in Appukuttan''s case, referred to above, has been confirmed. Therefore, the insurer cannot avoid the liability towards the pillion rider.

5. The appeal is accordingly dismissed. Appeal dismissed.

