
(1996) 02 KAR CK 0070
In the Karnataka High Court
Case No : MFA No. 209 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

P.V. Lakshmanan

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 A

Citation : (1997) ACJ 107 : (1996) ILR (Kar) 2224 : (1996) 3 KarLJ 475

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; B.A. Ramakrishna, for R-1 and Ashok Haranahalli, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Mohamed Anwar, J.—This appeal by the Insurer, United India Insurance Company Limited, is filed against the Judgment and Award dated 8th August, 1990 of the M.A.C.T. II, Bangalore Rural District, made in M.V.C.No. 342/87 disposed of on its file holding the appellant also liable to pay the compensation of Rs. 46,000/- to respondent No. 1-Claimant jointly and severally with respondent No. 2, owner of the offending car bearing Regn. No. KLN 1176.

2. The arguments of learned counsel on both sides are heard.

3. Respondent No. 1 (hereinafter referred to as "the claimant") filed his petition u/s 110-A of the Motor Vehicle Act, 1939 ("the Act" for short) before the Tribunal claiming compensation of Rs. 1,00,000/- on account of the injuries suffered by him in the accident occurred on 25.2.1987 on Mysore-Bangalore road due to negligent driving of the said car bearing Regn.No. 1176 by its driver, in which car he was travelling as a passenger. Appellant was made respondent No. 1 in the petition as Insurer of the said car. Respondent No. 2 herein was made respondent No. 2 in the petition and the Driver of the said car was impleaded as respondent No. 3 therein. Appellant, and respondent No. 2 appeared before the

Tribunal in the said M.V.C.No. 342/87 through their learned counsels but appellants alone contested the petition claim by filing its written statement.

4. Though the alleged insurance of the car with appellant was denied by it in its written statement, the same was admitted by it at subsequent stage of the proceeding before the Tribunal by production of its relevant insurance policy at Ex.R1 in evidence on record. The petition against R-3, Driver, was not pressed before the Tribunal by the claimant and, therefore, the petition stood dismissed as against the Driver.

5. On merits the claimant's petition came to be allowed partly by the Tribunal granting him the said compensation of Rs. 46,000/- as payable jointly and severally by appellant and respondent No. 2 herein, together with interest at 9% per annum under its impugned judgment and Award.

6. Aggrieved by the same the appellant, Insurer, has challenged the finding of the Tribunal holding the appellant also liable to pay the compensation to the claimant. The appeal is filed by the appellant on the ground that he is not liable to pay any compensation to the claimant since he was admittedly travelling as a gratuitous passenger in the said car of respondent No. 2 and that Ex.R-1 being the Act policy it does not cover such a passenger's risk.

7. Learned Counsel for appellant Sri. O. Mahesh reiterating the said ground urged in the appeal, argued against the impugned award of the Tribunal fastening the liability on appellant to pay the said compensation to claimant. He placed reliance on a decision of Supreme Court in *PUSHPABAI PURSHOTTAM UDESHI v. RANJIT GINNING & PRESSING CO.* 1977 ACJ 343

8. On the other hand the learned counsel for respondents 1 & 2, Messrs. B.A. Ramakrishna and Ashok Haranahalli, placing reliance on a decision of Punjab & Haryana Court in *Smt. Kailash Kumari and others Vs. Bhola and others*, , canvassed their arguments in support of the validity of the impugned finding and Award of the Tribunal holding the appellant-Insurer also liable jointly and severally with respondent No. 2, owner of the vehicle, to pay compensation to the claimant.

9. The short point, therefore, that arises for consideration in this appeal is:

Whether finding of the Tribunal holding appellant Insurance Company also liable to pay compensation to the injured (claimant) is legally not correct and valid as he was travelling as a gratuitous passenger in the private car of respondent 2?

10. Admittedly, respondent No. 2 was the owner and appellant was the Insurer of the said car bearing Regn. No. KLN 1176 at the material time. Ex.R1 is merely appellant's office copy of the relevant policy schedule. The copy of the first sheet of that policy schedule was also produced on record in M.V.C.342/87 from respondent's side. In both these documents, in the column pertaining to payment of premium, it is type-written as "Rs. 100/- Act only". It was, therefore, contended by the learned counsel for appellant that the policy in question being

the Act policy, it does not cover the risk to the passenger travelling in the said car of respondent No. 2 as has been held by the Supreme Court in the case of Pushpabai Purshottam Udeshi, supra, there being no statutory obligation for the Insurer under Chapter VIII of the Act to insure the risk to gratuitous passenger travelling in a private car.

11. The identical point came up for consideration in appeal before the High Court of Punjab and Haryana in KAILASH KUMARI v. BHOLA. In the case of KAILASH KUMARI the claimants therein were granted compensation by the Tribunal on the death of the deceased bread winner of their family who died in a motor accident. In that case also the deceased was travelling in a private car as a gratuitous passenger when it met with the accident resulting in his death. The Insurance Company which had issued the policy in respect of the said car therein was not held liable by the Tribunal to pay compensation to the claimants on the ground that the said policy did not cover the risk to gratuitous passenger travelling in a Private car. In appeal the High Court of Punjab and Haryana disagreed with the view taken by the Tribunal in absolving the Insurance Company of its liability and held otherwise on the basis of the relevant instructions of the Tariff Advisory Committee issued to all insurance companies subsequent to the Supreme Court decision in Pushpabai Purushottam Udashi's case. In that case of Kailash Kumari the High Court of Punjab and Haryana made the following material observation:

"Learned counsel for the respondents placed reliance on Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , in support of the proposition that the insurance company is not liable when the passenger is carried without hire or reward. This judgment does not render any assistance to the learned counsel. The decision of the apex Court makes it clear that although there is no statutory liability of the insurance company to pay compensation to a passenger, a contract of insurance can provide otherwise. The instructions of the Tariff Advisory Committee which is a statutory body will be deemed to have been incorporated in every contract of insurance. Even if it is not expressly mentioned in the contract by the deeming provisions, the Court will so read it in the insurance policy that the directions given by the Tariff Advisory Committee were incorporated in the insurance policy. After reading the directions in the insurance policy, the Court will give effect to it. The judgment of the Supreme Court was rendered on the same date, when the instructions of the Tariff Advisory Committee came into force. Moreover, in the Supreme Court case, the accident had taken place on 18.12.1960 prior to the insurance of the directions of the said Committee".

So, concluding, the learned Judge has further proceeded to observe, "after issuance of the instructions of the Tariff Advisory Committee, the insurance company cannot avoid liability. The owner of the vehicle can legitimately say that under the policy, the insurance company was bound to pay to the claimants for the death of the passenger. The insurance company has not let any evidence on record that its liability is limited. In the absence of any evidence, it has to be

held that the liability of the insurance company is unlimited."

12. The fact that the Tariff Advisory Committee has issued the said relevant instructions dated March 13, 1978 is not disputed by Sri. Mahesh, learned counsel for the appellant insurance company. As such I am in respectful agreement with the aforesaid observations of the learned Judge of the Punjab & Haryana Court made in Kailash Kumari's case, supra, to the effect that the said instructions of the Tariff Advisory Committee must be deemed to have been incorporated in all the existing policies of the insurance company on and with effect from March 13, 1978. These instructions will have the statutory force. By virtue of the said Tariff Advisory Instructions it logically follows that the Act policy also governs the risk to the gratuitous passenger travelling in a private motor-car at the time of accident. Therefore, the finding of the Tribunal holding the appellant insurance company also liable to pay compensation to the respondent-claimant cannot be held illegal or invalid. On the other hand I find the Tribunal legally justified in its said finding.

13. Moreover, there is an additional clause put on the face of the front page of Ex.R-1 policy schedule with a seal, which reads:

"The policy covers use for any purpose other than:

a) hire or reward. b) organised racing or speed-resting."

It is argued by learned counsel for respondents that the clause sufficiently widens the liability of the appellant insurance company so as to cover the risk of gratuitous passenger in a private car in as much as it permits the use of the car for any purpose other than for hire or reward and organised racing and speed testing. It was maintained by learned counsel for respondents that its use includes carrying of gratuitous passengers also. No other plausible explanation was offered by the learned counsel for appellant for incorporation of said clause in its policy schedule. I find sufficient legal force in contention of learned counsel, in that, such a construction falls in complete harmony with the said instructions dated March 13, 1978 issued to the insurance company by the Tariff Advisory Committee. It, therefore, necessarily follows that by virtue of the said clause contained in Ex.R1 policy also, the appellant becomes liable in respect of risk to a gratuitous passenger of the said car of respondent No. 2. Hence, I find the appeal devoid of merit.

14. In the result, for the reasons stated above, the appeal is dismissed with costs of respondent claimant. The Advocate Fee is fixed at Rs. 500/-.