

(1999) 10 KL CK 0072

In the High Court Of Kerala

Case No : M.F.A. No"s. 876, 952, etc. of 1994

United India Insurance Co. Ltd.

APPELLANT

Vs

Sabeer Ali and Others

RESPONDENT

Date of Decision : 22-10-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2000) 1 ACC 206 : (2000) ACJ 839 : (2000) 1 ILR (Ker) 405 : (2000) 2 RCR(Civil) 287

Hon'ble Judges : K.K. Usha, J;D. Sreedevi, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant; T.P.M. Ibrahim Khan, M.P. Prabhanandan, M.M. Irshad Moopan and M.A. Shafik, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—These appeals arise out of a common award of the Motor Accidents Claims Tribunal, Manjeri in O.P. (M.V.) Nos. 474, 551, 621, 477, 622, 552, 620, 479, 553, 623, 504, 476, 889, 550, 860 and 475 of 1990. Along with the above petitions one more claim petition was disposed of by the Tribunal, i.e., O.P. (M.V.) No. 478 of 1990, which is not appealed against. The appeals are at the instance of the insurance company, which was the insurer of a jeep with registration No. KLL 4862 which was involved in an accident on 17.12.1989. Seventeen persons were carried in the vehicle at the time of the accident. Three among them died and the remaining passengers sustained injuries. The Tribunal found that the accident happened due to the negligence on the part of the driver of the jeep who was impleaded as the respondent No. 1 in the petitions. The respondent No. 2 was the owner and respondent No. 3, the insurer of the jeep.

2. A contention was raised on behalf of the respondent No. 3 that it is not liable to indemnify the respondent No. 2, i.e., the insured in this case as there was a breach of a specified condition of the policy. According to the insurance company, the vehicle which had permit to carry only six passengers including the driver,

was carrying seventeen persons at the time of the accident and it would amount to a breach of specified condition of the policy, i.e., one coming u/s 149(2)(a)(i) (c) of the Motor Vehicles Act, 1988. The Tribunal rejected the contention raised by the insurance company that it is absolved from the liability to pay compensation to the passengers carried in the vehicle. On the other hand, the Tribunal directed the insurance company to pay the amount of compensation to each of the claimants reserving the insurance company's right to realise the excess amount paid by it under the contract of insurance as provided u/s 149(5) of the Motor Vehicles Act from the owner of the jeep involved in the accident. The only contention raised in these appeals by the insurance company is that the Tribunal has erred in finding that there was no violation of condition coming under Clause (c) as mentioned above. The relevant portion of Section 149 reads as follows:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

xxx xxx xxx

No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle -

xxx xxx xxx

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

3. The above would show that the insurance company will be absolved if the vehicle involved in the accident was being used for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle. In the facts of this case, admittedly the jeep is a taxi having permit to carry passengers. Then the only question is whether carrying more passengers than the number permitted would make its use for a "purpose" other than the purpose for which the permit is granted.

4. A mere reading of the provisions of Clause (c) of Section 149(2)(a)(i) would show that there is no merit in the contention raised by the insurance company. The breach of the condition should be one relating to the use of the vehicle for a

purpose not allowed by the permit. In the present case, there is no dispute that the offending vehicle was allowed by permit to carry passengers. It is also admitted case that when the accident happened the vehicle was being used as a taxi for carrying passengers. If that be so, there is no question of putting the vehicle to a purpose not allowed by the permit. If the vehicle was used for carrying goods then it would have come within Clause (c). So also, if it was permitted to be used as a public goods carrier but at the same time it was used to carry passengers then also it would come under Clause (c). Merely because more number of passengers than was allowed under the permit were carried, it cannot be said that the vehicle was used for a purpose not allowed by the permit. It may amount to a violation of the permit conditions regarding number of persons to be carried in the vehicle. But, that will not be a reason coming under Clause (c). Therefore, according to us, the insurance company cannot be absolved from its liability for the reason that there is breach of a specified condition of the policy being one coming u/s 149(2)(a)(i)(c).

5. More than two decades back a similar view was expressed by Krishna Iyer, 1. (as he then was) in *Kesavan Nair v. State Insurance Officer* 1971 ACJ 219 while considering similar provisions u/s 96(2) of the Motor Vehicles Act, 1939. In the above case a bus which was overloaded met with an accident resulting in loss of 7 lives and injuries to many others. The insurer took the contention basing on Section 96(2)(b)(i)(c) that it is absolved of its liability to pay compensation, in view of Section 96(2)(b)(i)(c) of the Motor Vehicles Act, 1939 which is similarly worded as Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988. While rejecting the above contention, Krishna Iyer, J. observed as follows:

...I am afraid, the argument is fallacious and confuses between the purpose for which the vehicle is used and the conditions subject to which such purpose is effectuated. The purpose of the stage carriage was to carry passengers and, in this case, it is obvious that the bus was carrying passengers. If it had been used not for carrying human beings but goods like a truck, there might have been user for an unwarranted purpose. On the other hand, if in carrying out the sanctioned purpose, namely, transporting passengers, any conditions are violated either by overspeeding or overloading, for example, there may be a violation of the conditions of the permit, but one cannot say that by that breach, the vehicle is used for a purpose different from the one authorised by the permit.

This view was quoted and approved by Venkataramiah, J. (as he then was) in a Bench decision of the Karnataka High Court, *Madras Motor & Genl. Ins. Co. Ltd. v. Nanjamma* 1977 ACJ 241

6. In *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.*, Divisional Officer, Hassan, more or less a similar situation arose. In that case in a vehicle in which permit allowed only to carry six workmen including the driver, more persons were permitted to travel. The Supreme Court took the view that "the misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by

themselves, had gone to contribute to the causing of the accident". It was not argued before us that accident was caused due to the overloading of the vehicle.

7. Apart from the above, it has come out in evidence that among the passengers only 5 were adults and all the remaining 12 were children who were all claimants in the different petitions. The Tribunal has based its decision not to absolve the insurance company on the above fact.

8. We do not find any reason to accept the contention raised by the insurance company. The fact that the jeep was carrying at the time of the accident more persons than the number which was allowed under the permit is no reason to exonerate the insurance company. The provisions contained u/s 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988 can have no application in the facts of these cases. The jeep was being used to carry passengers and not for any other purpose which was not allowed under the permit.

9. In the result, the appeals fail and they are dismissed. No order as to costs.