
(1992) 11 KL CK 0036
In the High Court Of Kerala

United India Insurance Co. Ltd.

APPELLANT

Vs

Santhamma V.N. and Others

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Citation : (1993) 2 ACC 336

Hon'ble Judges : K.S. Paripoornan, J;K.K. Usha, J

Bench : Division Bench

Judgement

K.S. Paripoornan, J.—The third respondent-insurer in O.P. (MAC) No. 290/83, Motor Accidents Claims Tribunal, Kottayam is the sole appellant in the appeal. The claimants before the Tribunal are respondents 1 and 2 herein. Respondents 1 and 2 before the Tribunal (the owner and driver of Bus bearing Registration No. KLO 4311) are respondents 3 and 4 herein. The claimants filed the application for compensation on account of the death of one E.S. Gopala Pillai on 15.12.1978 in an accident while he was returning home by the aforesaid vehicle KLO 4311. It was alleged that the driver drove the bus in a rash and negligent manner and thereby lost control of the vehicle and as a result of the accident deceased Gopala Pillai sustained fatal injuries. The deceased was getting a sum of Rs. 5646/- per mensem as senior Accountant at the District Treasury, Kottayam. He was only 42 years old, at the time of his death. He had good chances of promotion as Superintendent, D.T.O. etc. The first claimant was pregnant at the time of death of her husband Shri Gopala Pillai. Since the accident and the resultant death occurred due to the negligent driving of the second respondent, the claimants claimed a compensation of rupees two lakhs on various counts.

2. The first respondent filed a written statement denying negligence on the part of the driver-2nd respondent. It was stated that the accident occurred because the deceased put his head outside the bus negligently. It was his plea that the bus was driven in a norms" speed and reasonably. The quantum of compensation was stated to be excessive. In any view, it should be paid by the third respondent/insurer, since the vehicle was having a valid policy of insurance at the

time of accident

3. The third respondent (appellant herein) filed a written statement contending that the petition is unsustainable that there was no negligence on the part of the second respondent and the compensation claimed is excessive. The third respondent also took up a plea that the claimants should prove that the vehicle was insured with the third respondent and that the first respondent (owner of the vehicle) should be directed to produce the policy of the vehicle. It was also stated that the liability of the insurer is limited to Rs. 5000/-, since the deceased was a passenger (paragraph 6 of the written statement of the third respondent dated 18.7.1983).

3. The Motor Accidents Claims Tribunal framed two issues: (1) whether the petition is bad for non-joinder of necessary parties, and (2) what is the quantum of compensation and who is liable to pay the same. It was found that the petition is not bad for non-joinder of parties. The Tribunal adverted to the fact that deceased Gopala Pillai was a passenger of the bus and found that the accident occurred because of the negligence of the driver of the bus (2nd respondent). After discussing the evidence in the case, the Tribunal found that the claimants are entitled to realise a sum of Rs. 56,000/- as compensation with future interest at 6%. The third respondent being the insurer of the vehicle and the vehicle having a valid cover of insurance policy at the time of accident, the third respondent was held liable to pay the entire amount of compensation. It is from the aforesaid award of the Tribunal, dated 27.3.1984, the third respondent has come up in appeal.

4. We heard Counsel for the appellant Mr. S. Parameswaran, Counsel for respondent 1 and 2 Mr. V.N. Achutra Kurup and Counsel for respondents 3 and 4 Mr. T.R. Raman Pillai.

5. The finding of the Tribunal, that Shri Gopala Pillai died as a result of the accident and the accident occurred due to the negligence of the driver of the bus were not challenged before us. The further finding determining the compensation at Rs. 56,800/- was also not challenged. We are of the view that the findings of the Appellate Tribunal, that Gopala Pillai died as a result of the accident and that the accident occurred due to the negligence of the driver of the bus, and that the claimants are entitled to a compensation of Rs. 56,800/- with interest, are based on substantial material and are not open to any challenge.

6. The only service plea made by the appellant's Counsel, at the time of hearing, was that the Motor Accidents Claims Tribunal was in error in not framing an issue regarding the limited liability pleaded by the third respondent. It was argued that the first respondent, in paragraph 8 of the written statement, dated 9.3.1982, had only pleaded that the vehicle was insured with the third respondent and that the policy was in force at the time of accident. The third respondent has specifically pleaded, in paragraph 6 of the written statement dated 18.7.1983, that the first respondent must prove that the vehicle KLO 4311 was insured with

the third respondent and the first respondent should be directed to produce the policy and that in any event the liability of the insurer is limited to Rs. 5,000/- in all, as the deceased was a passenger. In column 17 of the claim petition, the claimant have given the name of the third respondent-insurer, but the policy number is not indicated. In the light of a specific plea regarding limited liability by the third respondent, the Tribunal should have framed an issue on that score. It did not do so. It does not appear that the said plea was even adverted to. The Tribunal proceeded on the basis that the vehicle is insured with the third respondent and the vehicle was having a valid cover of policy at the time of accident and so the third respondent-insurer is liable to pay the entire amount. Neither the first respondent nor the third respondent produced the insurance policy or a copy thereof. Even proceeding on the basis that the vehicle was insured with the third respondent, what is the character of the policy, whether a comprehensive one or only a limited liability, was not adverted to or posed for consideration. It is true that when the insurer pleads limited liability he must produce the policy and prove the same. It has been so held by the Supreme Court in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, . A Bench of this Court has held so in *M.E.A. No. 58 of 1985*, reported in *Oriental Insurance Co. Ltd. v. C.V. Joseph* 1992 (2) KLT page 16--Short Notes--Case No. 22. But, in this case, notwithstanding a plea to the effect that the liability is limited no issue was framed on that score. Counsel for the appellant fairly submitted that the insurer was certainly not justified in failing to produce the insurance policy before the Tribunal. But, Counsel prayed that in view of the peculiar circumstances of this case, to the effect that notwithstanding that a specific plea was taken in paragraph 6 of the written statement by the third respondent, the Tribunal did not apply its mind to the pleas put forward by the parties and failed to frame a proper issue, the insurer was under the bona fide belief that the first respondent will be directed to produce the policy or that an opportunity may be afforded to the insurer to produce the policy to substantiate its plea. No such step was taken. It is as a result of the above, that there has been no proper adjudication on the question as to whether the Insurer's liability is absolute or limited, the appellant's Counsel submitted that the Insurance Company is prepared to pay the entire compensation awarded by the Tribunal, but prayed for an opportunity to prove that its liability is limited, by producing the policy or otherwise.

7. We should say that the appellant miserably ailed to take proper care in the conduct of the case before the Tribunal. No doubt, it raised a specific plea in paragraph 6 of the written statement that its liability is limited. The matter rested there. The plea of the first respondent regarding the insurance policy, in paragraph 8 of the written statement, was vague, None of the parties even furnished the policy number. What is more, the Tribunal did not advert to the pleadings in the case and failed to frame proper issues. There was total negligence on the part of all concerned in failing to formulate appropriate issues which called for adjudication.

8. In these state of affairs, we are of the view that the submission made by the appellant's Counsel should be accepted. It is true that there is a duty cast on the insurer to produce a copy of the policy. But, in all cases, as a routine, the owners of vehicles cannot be smugged into the belief that they have no duty to produce the policy and assist the Court in coming to a just and proper conclusion. The owners of vehicles are also equally responsible, either to produce the original of the policy which will be with them or at least to give sufficient indication in their pleadings or is the evidence about the date and number of the policy etc. If they do not so, they are also to be blamed for not producing the policy.

9. Taking as overall view of the matter, we are of the view that in the larger interest of justice we should confirm the award passed by the Motor Accidents Claims Tribunal, Kottayam dated 27.3.1984 in O.P. (MAC) No. 290/83 and direct that the appellant should pay the entire amount awarded to the claimants. This judgment should be considered as a preliminary judgment and the matter should be remitted back to the M.A.C., Kottayam to frame an issue as to the nature and scope of the liability of the insurer and give a chance to the third respondent to prove that its liability is limited. In that proceeding, the insurer as well as respondents 1 and 2 will have ample opportunity to prove whether the liability of the insurer is limited or comprehensive. Whatever may be result of the final adjudication the claimants are entitled to the full amount awarded by the Tribunal from the insurer (appellant herein). To this extent, we confirm the award passed by the Tribunal. The third respondent-insurer is paying the amount for and on behalf of the owner of the vehicle on the basis of the policy. So, after the remit, if the insurer is able to prove that under the policy its liability is limited the Tribunal may give appropriate directions to enable the insurer to realise the amount paid in excess of its liability to be recovered from respondents 1 and 2 with interest and cost. To make this position clear. For this limited purpose alone we order a remit of the matter to the Motor Accidents Claims Tribunal, Kottayam for passing a final judgment and treating the award not passed as a preliminary award in the matter.

10. The appeal is disposed of as above. There shall be no order as to costs.