
(2005) 12 KL CK 0083
In the High Court Of Kerala

United India Insurance Company Limited	APPELLANT
Vs	
Velayudhan and Another	RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2006) 4 ACC 44 : (2006) 1 ILR (Ker) 622 : (2006) 4 RCR(Civil) 412

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Judgement

J.M. James, J.—The United India Insurance Company, the 2nd respondent in O.P. (MV) 2277/2000 of the Motor Accident Claims Tribunal, Thrissur, is the appellant. The accident occurred on 23.1.2000, involving a goods autorikshaw, bearing registration No. KL-8/D 7044, in which the claimant, the first respondent herein, was travelling, accompanying the goods, firewood, as the owner of the firewood, and he sustained injuries. The Tribunal awarded a compensation of Rs. 35,480 and directed to realise the amount from the insurance company, the appellant. The same is under challenge.

2. The contention of the learned Counsel for the appellant, insurance company, is that there is no provision in Ext. B1 policy of insurance for carrying any passenger in the goods autorikshaw. Thus, the claimant was a gratuitous passenger. Therefore, as the goods autorikshaw is not covered under the policy for carrying any gratuitous passenger, the insurance company is not liable to indemnify the owner of the vehicle. Hence, the claimant is not entitled for any compensation amount from the insurer. It is, therefore, contended that the Tribunal went wrong in directing the insurer to honour the award. The learned Counsel, to emphasise this point, relied on *New India Assurance Co. Ltd. v. Asha Rani III* (2002) A.C.C. 753(S.C.) : 2003 (I) KLT 165; *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, ; and *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others*, . In *Asha Rani*'s case cited above, the Apex Court was dealing with Section 95 of the Motor Vehicles Act, 1939, hereinafter referred

to as "the old Act", and Section 147 of the Motor Vehicles Act, 1988, hereinafter to be referred to as "the Act", as it stood before the amendment of 1994, as well as after the amendment. The Court held that the expression "to any person" in Section 147 of the Act will not cover either the owner of the goods or his authorised representative, being carried in the vehicle. However, after the amendment of Section 147 in the year 1994, it is made compulsory for the insurer to insure, even in case of goods vehicle, the owner of the goods or his authorised representative being carried in the vehicle, when that vehicle met with an accident and the owner of the goods or his authorised representative either dies or suffers bodily injuries. The Court further held that any person appearing in Section 147 of the Act must be attributed having regard to the context in which they have been used, i.e., a third party. Therefore, the Court was of the opinion that the provision thereof did not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger in a goods vehicle and the insurer would not be liable therefor.

3. In *National Insurance Co. Ltd. v. Baljit Kaur*, reiterating *Asha Rani* case, it was further held at paragraph 20 as follows:

20. It is therefore, manifest that inspite of the amendment of 1994, the effect of the provisions contained in Section 147 with respect to person other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time of the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

4. In *National Insurance Co. Ltd. v. Bommithi Subbhayamma* (supra), also the Apex Court considered *Asha Rani*'s and *Baljit Kaur*'s cases, cited above, and reiterated the principles contained in both the above cases.

5. The bar placed reliance on *Sasi Vs. Saidali*, , in which a Division Bench of this Court had occasion to consider the injury sustained by a person, who was travelling on the load carried in a trailer, attached to a tractor. Holding that the trailer was meant only for carrying goods, by using a tractor, a tractor with trailer will satisfy the definition of goods vehicle, as it is meant to carry goods. However, in view of the authoritative pronouncement on the application of Section 147 of the Act in *Asha Rani*'s and *Baljit Kaur* 's cases cited above, explaining the position after the introduction of the Act and prior to the 1994 amendment and thereafter, I am constrained to follow the authorities of the Apex Court cited above.

6. The learned Counsel for the claimant, referring to Section 149(2) of the Act, contended that there are restrictions for the Insurance Company to raise their defences in a claim petition, relying on the insurance policy, which covers the

vehicle for the purpose for which it was put to use. Section 149(1) lays down that the payment of the award amount shall only be subject to the provisions contained in Section 147(1) of the Act. In other words, the conditions contained in the insurance policy, issued u/s 147(1) of the Act, together with Rule 141 of the Motor Vehicles Rules and the certificate of insurance in Form No. 51, shall be applicable in the case. Therefore, I am unable to accept the contention of the Counsel for the claimant that u/s 149(2) of the Act, the Insurance Company is not entitled to take up such defences.

7. In the case at hand, it was deposed by the claimant, as P.W. 1, that the accident occurred when he was accompanying the firewood being carried in the goods autorikshaw. Except his interested testimony, there is no material available from the police records to show that the goods autorikshaw was used for carrying firewood and the claimant was accompanying the same. There is no provision in a goods autorikshaw for a passenger to be carried in it. Therefore, it is necessary to examine whether Ext. B1 policy was intended for the coverage of gratuitous passengers or the owner or the authorised representative of the owner of the goods carried in a goods autorikshaw.

8. A perusal of Ext. B1 reveals that the policy was not intended for the purpose of passengers. The column regarding the licensed carrying capacity of passengers is not filled and is kept blank. Thus, at the time of entering into the contract of insurance, it was not intended that a passenger would be covered under Ext. B1 policy. Therefore, I hold that Ext. B1 policy did not cover a gratuitous passenger. The claimant was a gratuitous passenger in the goods autorikshaw and, hence, the appellant, United India Insurance Company, cannot be held liable to indemnify the owner of the autorikshaw.

In view of the above discussions, the direction of the Tribunal in the impugned award dated 23.3.2005, allowing the claimant to realise the award amount from the appellant, the 2nd respondent therein, is set aside. The claimant shall realise the award amount from the owner-cum-driver of the goods autorikshaw, the first respondent in the claim petition, the 2nd respondent in this appeal.