

(1995) 05 KL CK 0004
In the High Court Of Kerala
Case No : M.F.A. No. 296 of 1995-B

United India Insurance Company Ltd.	APPELLANT
Vs	
Appukuttan and Another	RESPONDENT

Date of Decision : 31-05-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (1995) ACJ 888 : (1995) 84 CompCas 686

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : Siby Mathew and Wilson Urmese, for the Appellant;

Judgement

K.T. Thomas, J.—This appeal is by an insurance company in challenge of a direction contained in the award of a Motor Accidents Claims Tribunal ("the Claims Tribunal" for short) that the compensation amount granted should be paid by the insurance company.

2. The claim was made in respect of a motor accident which happened on June 2, 1993. The claimant was the pillion rider on a scooter (KRB 4171) which collided with another vehicle. He fell down and sustained some injuries. He claimed compensation from the rider of the scooter as well as from his insurer.

3. Two points were raised by the appellant. One was that the first respondent had no licence to ride the scooter and the other was that the pillion rider was not a third party and hence his risk was not covered by the insurance policy. The first contention does not appear to have been pursued before the Claims Tribunal and the second point was found against the appellant. Accordingly, the Claims Tribunal passed the award in a sum of Rs. 26,140 together with interest at the rate of 12 per cent. per annum from the date of claim and directed the appellant-company to pay the amount to the claimant.

4. The only contention raised before us is that in view of the decision of a Division Bench of this court in Velunni v. Vellakutty [1989] 2 KLT 227, the

insurance company cannot be fastened with liability to pay compensation in respect of a pillion rider of the motorcycle.

5. The said contention is advanced on the premise that the insurance policy is "a policy for Act liability" and hence the limit of liability laid down in the Motor Vehicles Act would apply. The decision in Velunni's case [1989] 2 KLT 227 was rendered in a case where the accident happened before the coming into force of the Motor Vehicles Act, 1988. Then it was covered by Section 95 of the Motor Vehicles Act, 1939. In the proviso (ii) to Section 95(1) of the said Act a policy of insurance was not required to cover liability in respect of death or bodily injury to persons who were carried in or upon the vehicles at the time of occurrence. It was in consideration of the said proviso that the Division Bench has held in Velunni's case [1989] 2 KLT 227 that a pillion rider of a motorcycle is not required by statute to be covered for the risk regarding bodily injuries.

6. But the position has completely changed when the new Motor Vehicles Act, 1988, came into force. In Section 147 of the new Act which corresponds to Section 95 of the old Act there is no limit in certain cases as contained in Clause (ii) of the old Act. The corresponding proviso in the old Act contained three clauses whereas now there are only two clauses. What was dropped in the new Act is the clause which excluded the coverage for death or bodily injury to persons carried in or upon the vehicle. That means 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 the pillion rider of a motorcycle.

7. For the aforesaid reasons, we are not inclined to interfere, though that is not the reason stated by the Claims Tribunal for fastening the appellant with liability.