(2010) 06 KL CK 0129

In the High Court Of Kerala

Case No : M.A.C.A. No. 1054 of 2004

United India Insurance Company Ltd. — APPELLANT

Vs

Manoj and Others — RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2011) ACJ 1656 : (2011) 1 ILR (Ker) 358 : (2011) 1 KLT 502

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Mathews Jacob, for the Appellant; Philip T. Varghese and Thomas T. Varghese for 1st Respondent and A. Antony, for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

P.Q. Basheer, J.—The Appellant-company is the insurer of a Goods Autorickshaw, which met with an accident while carrying some goods and the owner thereof, in it. The Tribunal after considering the claim of the victim/owner of the goods, passed an award directing the Appellant to pay a sum of ` 48,750 towards compensation with 9% interest per annum.

2. The Appellant takes exception to the above award contending primarily that the Tribunal ought to have exonerated it from the liability to indemnify the insured/ owner of the vehicle inasmuch as;

(a) the claimant was not the owner of the goods which was allegedly being carried in the goods vehicle, and;

(b) the owner and driver of the vehicle were not supposed to allow the claimant to travel in the said vehicle which did not have any provision to accommodate a passenger, be it the owner of the goods or a gratuitous passenger.

The above contentions were repelled by the Tribunal. Hence this appeal.

3. Sri Mathews Jacob, learned senior counsel who appears for the Appellant, lays heavy emphasis on the fact that no provision had been admittedly made in the Goods Autorickshaw to accommodate the owner of the goods as a passenger. He points out that a Goods Autorickshaw is provided only with a driver''s seat and nothing more. It is further contended by the learned senior counsel that there was absolutely no evidence to show that the claimant was the owner of the goods.

4. Section 147(1)(a)(i) of the Motor Vehicles Act deals with the liability of the insurer to pay compensation against any liability which may be incurred in respect of the death of or bodily injury to any person including the owner of the goods or his authorized representative carried in the vehicle. The above liability of the insurer in respect of any person, including the owner of the goods in a goods vehicle was incorporated in the Act, through an amendment in Act 54 of 1994 with effect from November 14, 1994. Though the Appellant had contended that the claimant was not the owner of the goods, the Tribunal had repelled the above contention in the absence of any contra evidence adduced by the Appellant.

5. As regards the contention about the absence of any seating provision in the Goods Autorickshaw to accommodate the owner of the goods, it has to be noticed that the owner who accompanies his goods in the vehicle cannot be penalized if the owner or driver of the vehicle accommodates him in the vehicle in violation of the policy conditions. Learned Senior Counsel contends that when no provision has been made in a Goods Autorickshaw to accommodate the owner of the goods, there can be no doubt that the insurer will not be liable to indemnify the owner of the vehicle. In other words, the contention is that the Appellant/Insurance Company will have absolutely no liability since the claimant had chosen to travel in a vehicle which did not even have a seat provided for such travel.

6. We are afraid; the above contention is wholly misconceived. An owner of the goods is entitled to accompany his goods. It may be true that in a Goods Autorickshaw no separate seat is provided to accommodate the owner of the goods while he is accompanying it. He may, in such a contingency, share the seat of the driver. But, if the owner and/or driver of the insured vehicle accommodates the owner of the goods in the vehicle, such action can be treated only as a violation of the policy conditions.

7. Their Lordships of the Supreme Court in United India Insurance Co. Ltd. v. Suresh 2008 (4) KLT 552 (S.C.)has taken such a view. The question that came up for consideration in the above case was whether a person who hired a goods vehicle would come within the purview of Section 147(1) of the Act, although no goods were being carried at the time of the accident. While reiterating the well-settled legal position as laid down in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, that the term "any person" envisaged u/s 147(1)(b)(i) shall not include any gratuitous passenger, Their Lordships held that if the claimant had

not been traveling in the vehicle as owner of the goods, he shall not be covered by the policy of insurance. To put it differently, no gratuitous passenger can be allowed to travel in a goods vehicle and not even the owner of the vehicle can share the seat of the driver in a Goods Autorickshaw. But, it was held that if the owner of the goods is allowed to share the seat of the driver, it will be only at the risk and peril of the owner/insured of the vehicle.

8. For the reasons stated above, the contentions raised by the Appellant in this case are liable to be repelled. We do so. However, it will be open to the Appellant to recover the amount of compensation now ordered to be paid to the claimant from the owner of the vehicle after making payment to the claimant.

With the above modification in the award, the appeal is dismissed.