
(1989) 11 KL CK 0017
In the High Court Of Kerala

Untied India Insurance Company Ltd.

APPELLANT

Vs

Surendran Nair

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110C(2A), 96(2)

Citation : (1990) 1 ACC 596 : (1990) ACJ 581 : (1990) 1 ILR (Ker) 674

Hon'ble Judges : Ramakrishnan, J;Radhakrishna Menon, J

Bench : Division Bench

Judgement

Radhakrishna Menon, J.—The Insurance Company, the third respondent in O.P. (M.V.) No. 774/1981 before the Motor Accidents Claims Tribunal, Ernakulam is the appellant.

2. On a perusal of the memorandum of appeal it is clear that the grounds urged therein are grounds which can be availed of only by the insured.

3. The counsel for the claimant therefore argued that the appeal was not maintainable. Dilating on this argument the counsel submitted that the Insurance Company was not entitled to take any defence which is not specified in Sub-section (2) of Section 96 of The Motor Vehicles Act, 1939, for short, The Act. Before we consider this case of the claimant we shall briefly state the arguments advanced by the counsel for the appellant. The counsel submits that the appeal may be treated as one filed on behalf of the insured and that is possible in view of Section 110-C(2) of Chapter VIII of The Act. Had that not been the position there was no need for the Tribunal to allow the appellant to cross-examine the witnesses "with permission", the counsel submits. He has a further case that in any event, in view of Clause (2) of the conditions incorporated in the policy, the appellant has every right to take up the defence, the insured ordinarily can take in a case like this.

4. We shall now consider the argument based on Section 110-C(2A). Section 110-C(2A) reads:

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

This section provides that where in the course of any enquiry the Claims Tribunal is either satisfied that there was collusion between the claimant and the person against whom the claim was made or the person against whom the claim was made had failed to contest the claim; then, the Tribunal, for reasons to be recorded in writing, can direct that the insurer who will be liable in respect of the claim shall be impleaded as a party to the proceeding and the insurer so impleaded has the right to contest the claim on all or any of the grounds that are available to the insured.

5. This sub-section would suggest that an order under this section enabling an insurer to contest the claim on all or any of the grounds that are available to the insured, can be passed by the Tribunal only as a sequel to the order directing impleadment of the insurer, he would pass on his being satisfied that either there is collusion between the claimant and the insured or the insured has failed to contest the claim, the counsel representing the contesting respondents submit. We are not impressed by this argument. This sub-section, in our view, was introduced to safeguard the interests of the insurer which, going by Section 96(2) is not entitled to take any defence which is not specified therein. Apart from Section 96(2), an insurer had no right to get itself impleaded as a party to the action by the claimant against the insured causing the injury. This right is a statutory right. While conferring this right, Sub-section (2) of Section 96 has imposed certain restrictions in regard to the defences, the insurer can take. The insurer is not entitled to take any defence which is not specified in that subsection. In short the only method of avoiding the liability provided for under Sub-section (2) is setting up the defences enumerated therein. See *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . The restriction thus imposed on the defences made it impossible for the insurer to contest the claim not properly contested by the insured. The intention of the legislature thus is clear that the sub-section is meant to safeguard the interest of the insurer. The objective of the sub-section could be achieved only if the insurer is allowed to contest the claim on all or any of the grounds available to the insured. However a literal adherence to the words used in the section namely that "an insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest"" would result in the insurer who had already been impleaded u/s 96(2),

not getting a chance to contest the claim on all or any of the grounds available to the insured even if it is established that the insured is hand and glove with the claimant and as such not contesting the claim. A grammatical or literal interpretation of these words, in our view, would lead to manifest absurdity. In such circumstances a construction not quite strictly grammatical or literal can be adopted. (See Craies on Statute Law, 17th edn., page 87-88). We therefore are of the view that the insurer who is already a party to the claim petition (having been impleaded u/s 96(2)) can also avail of this defence. Such an insurer accordingly can move the Tribunal under this sub-section and obtain the requisite permission to contest the claim on all or any of the grounds, the insured would take. If the insurer makes an application in this regard, the Tribunal shall consider the same on merits after notice to the claimant and insured and pass appropriate orders in writing enabling the insurer to contest the claim on the grounds available to the insured. In the present case there is nothing on record to show that the insurer-appellant has obtained such permission from the Tribunal and if that be so the insurer-appellant is not entitled to contest the claim on the grounds that are available only to the insured. The above argument of the learned Counsel therefore is rejected.

6. We, nonetheless are constrained to consider yet another argument of the learned Counsel namely, that in any event the appellant is entitled to contest the claim raising the grounds the insured alone can raise, in view of Clause (2) of the conditions incorporated in the policy, Clause (2) reads:

No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the insured shall give all such information and assistance as the Company may require.

Construing an identical clause, a Division Bench of this Court in *United India Insurance Co. Ltd. v. Premakumaran* 1987 (2) KLT 817 no doubt, has observed that the said clause enables the Insurance Company to contest the claim on all or any of the grounds, the insured alone could raise, notwithstanding the restrictions imposed by Sub-section (2) of S .96-. This observation of the Division Bench is based on a decision of the Madras High Court in *Madras Motor and Genl. Ins. Co. Ltd. v. Jagadeeswari* 1974 A.C.J. 234. The Madras High Court while holding so, has made reference to the decision of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . On going through the following observations of this Court we are of the view that the above observation is obiter.

There is some force in this argument of the learned Counsel for the Insurance Company. However, we do not go into that question since we feel that the

decision reported in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, may not be applicable to the case in hand.

In our view the decision of the Supreme Court does not lend support to the view taken by the Madras High Court which provides the basis for the above observation of the Division Bench. A reference in this connection to the following observations of the Supreme Court in *British India General Insurance* case, is profitable:

There is another ground on which the learned Solicitor-General supported the contention that all defences are upon to an insurer excepting those taken away by Sub-section (3). He said that before the Act came into force, an injured person had no right of recourse to the insurer and that it was Section 96(1) that made the judgment obtained by the injured person against the assured binding on the insurer and gave him a right against the insurer. He then said that that being so, it is only fair that a person sought to be made bound by a judgment should be entitled to resist his liability under it by all defences which he can in law advance against the passing of it. Again, we find the contention wholly unacceptable. The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship....

The Supreme Court thereafter stated as follows:

We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do.

The Supreme Court made the above observation at a time when Section 110-C (2A) was not there. Whatever that be, the positive declaration of the Supreme Court namely "the Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship" disentitles the appellant to rely on Clause (2) of the Insurance Policy and contend for the position that the said clause reserves its right to contest the claim on all or any of the grounds that are available to the injured. Sub-Section 2A of Section 110-C, as construed by us, entitles the insurer to contest the claim on all or any of the grounds available to the insured provided the Tribunal grants the requisite permission in terms of the said sub-section to the insurer to take up the said defence. There is another aspect that should be borne in mind while considering this question and it is this : The policy issued by the insurer is a policy of insurance in respect of

Third-party risk, arising out of the use of motor vehicles, such as complies with the requirements of Chapter VIII of The Act and includes unless the context requires otherwise, a cover note. The policy therefore should be one that complies with the requirements of Chapter VIII of The Act. That means any clause or condition in the policy can have force only subject to the provisions contained in Chapter VIII of The Act. Clause 2 of the policy extracted above therefore should be read and understood in the light of subSection 2A of Section 110-C. This clause, to the extent to which it runs counter to the above subsection is liable to be ignored. It therefore follows that an insurer with the permission of the Tribunal alone can contest the claim on all or any of the grounds, the insured can raise against the claim.

7. In the light of what is stated above we are of the view that the appeal is not maintainable. The appeal fails. Accordingly the same is dismissed. No costs.