
(2009) 09 KL CK 0034

High Court Of Kerala

Case No: M.A.C.A. No. 1471 of 2005

New India Assurance
Co. Ltd.

APPELLANT

Vs

Alekutty Antony

RESPONDENT

Date of Decision: Sept. 9, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2009) 4 KLT 130 : (2011) 7 RCR(Civil) 2133

Hon'ble Judges: M.L Joseph Francis, J; K.M. Joseph, J

Bench: Division Bench

Advocate: Lal George, for the Appellant; V. Chitambaresh T.C. Suresh Menon and Surin George Ipe, for the Respondent

Judgement

M.L. Joseph Francis, J.

M.A.C.A. 1466 of 2005 is filed by the third respondent, New India Assurance Company Ltd., in O.P. (M.V.) No. 1444 of 2001. M.A.C.A. 1471 of 2005 is filed by the third respondent in O.P.(M.V) No. 1495 of 2001 and M.A.C.A. No. 1479 of 2005 is filed by the third respondent in O.P.(M.V.) No. 1467 of 2001 on the file of the Motor Accidents Claims Tribunal, Kottayam. The respondents in the above appeals are the petitioners and other respondents in the O.P.M.Vs., which are filed u/s 166 of the Motor Vehicles Act.

2. A motor accident occurred on 22.7.2000 at about 8.30 p.m. on the Chengalam -Pallikathodu Public road at Kavunginpalam within Pallikathodu Police Station limit, in which the petitioner Sajan Jacob @ Sajan of O.P. J444 of 2001, Jobin Antony @ Jobin of O.P.(M.V.) No. 1465 of 2001, Sajeev Jacob @ Sajeev of O.P.(M.V.) No. 1467 of 2001 sustained injuries and deceased Antony of O.P.(M.V.) No. 1495 of 2001 sustained fatal injuries.

3. The petitioners in the above claim petitions as well as deceased Antony were head load workers and Mason respectively, who were travelling in goods vehicle No. KL 5D/7225, driven by the second respondent, on the way back home after having unloaded concreting materials at their point of destination. While so, when they reached at the place of the accident, due to hectic speed and rash driving of the second respondent, the vehicle went out of control and struck against the kayyala on the side of the road thereby capsizing and causing injuries to the petitioners Sajan, Jobin and Sajeerv as well as fatal injuries to Antony, who succumbed to the injuries sustained, on the way to the hospital.

4. The petitioner in O.P.(M.V.) No. 1444 of 2001 claimed compensation of Rs. 1.5 Lakhs, petitioner in O.P.(M.V) No. 1465 of 2001 claimed compensation of Rs. 50,000/- and petitioner in O.P. (M.V.) 1467 of 2001 claimed compensation of Rs. 70,000/- from respondents 1 to 4, the driver, owner, insurer as well as insured owner of the offending vehicle.

5. The legal heirs of the deceased, Antony, in O.P.(M.V) No. 1495 of 2001 claimed compensation of Rs. 6,41,000/- stating that they were dependents of Antony, who was a Mason, aged 42 years, receiving Rs. 5,000/- p.m. from his work. They also stated that by the accidental death, the petitioners suffered loss of love and affection as well as loss of dependency in their life.

6. The third respondent, Insurer, filed separate written statement in all the claim petitions. It raised almost similar and identical contentions in each claim. The Insurance Company denied the allegations of negligence raised against the second respondent driver and stated that the offending vehicle went out of control and capsized due to mechanical defect. It was further contended that the second respondent was not having any driving licence to drive the offending vehicle at the time of the accident. It denied the liability contending that eventhough the vehicle was insured by the third respondent, it has no liability to indemnify the risk of the petitioners and the deceased since they were gratuitous passengers travelling in the offending goods vehicle.

7. The above claim petitions were tried jointly and evidence was recorded in O.P.(M.V.) No. 1444 of 2001, Pws. 1 to 4 were examined and Exts. A1 to A22 and B1 to B3 were marked. The learned Claims Tribunal, on considering the evidence, allowed the above petitions. O.P.(M.V.) No. 1444 of 2001 was allowed and the petitioner was allowed to recover Rs. 32,700/- with interest at the rate of 6% p.a. from the date of the petition till the date of realisation. O.P.(M.V.) No. 1465 of 2001 was allowed and the petitioner therein was allowed to realise an amount of Rs. 6,000/- with interest at the rate of 6% p. a. from the date of the petition till the date of realisation. O.P.(M.V.) No. 1467 of 2001 was allowed and the petitioner is allowed to realise a sum of Rs. 25,520/- with 6% interest from the date of the petition till the date of realisation. O.P. (M.V.) No. 1495 of 2001 was allowed and the petitioners are allowed to realise a sum of Rs. 2,50,750/- together with interest at the rate of 6% p.a. from the date of the petition till the date of realisation. In all the above cases the third respondent Insurance Company was directed to pay the

amounts to the petitioners with a right to get reimbursement from respondents 1 and 2 in the claim petitions. Against that award in O.P.(M.V.) Nos. 1444,1467 and 1495 of 2001 the above appeals are filed by the third respondent, Insurance Company.

8. Heard the learned Counsel for the appellant Insurance Company, and the learned Counsel for the respondents.

9. The learned Counsel for the appellant submitted that the award passed by the Tribunal directing the appellant to satisfy the claim in respect of persons who were admittedly travelling in a goods carriage at the relevant time is not sustainable in law, being contrary to the binding judicial precedents rendered by the Apex Court. The learned Counsel invited our attention to the decision reported in *Asha Rani v. New India Assurance Co. Ltd.* 2003 (1) KLT 165 (SC) : (2003) 2 SCC 223, in which it was held that Insurance Company is not liable to pay compensation to passengers in a goods vehicle if the accident occurred prior to the amendment of the motor Vehicles Act by Act 54 of 1994, owner of the goods or his authorised agents or representatives are covered with effect from 14.11.1994. The provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to cover any passenger travelling in a goods carriage vehicles. In the ruling rendered by the Apex Court in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy* 2003 (1) KLT 583 (SC), it was held that the owner of a goods carriage is not bound to insure anybody carried in such goods carriage and as a natural consequence there cannot be any statutory liability on the insurer to satisfy such claim.

10. In the decision reported in [National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others](#), it was held that although the owner of goods or his authorised representative would now be covered by the policy of insurance in respect of 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 contract of insurance was entered into nor any premium was paid to the extent of the benefit of insurance to such category of people.

11. In the decision reported in *National Insurance Co. Ltd. v. Swaroop* AIR 2006 SC 2472 it has been held that the Insurance Company is not liable to pay compensation in respect of gratuitous passengers being carried in a goods vehicle, which met with the accident. The learned Counsel for the appellant, relying on the above decisions, submitted that the goods carriage as in the instant case is not authorised to carry any passenger and the permit issued in respect of the vehicle is clearly violated by the insured and as such the appellant/Insurance Company is liable to be absolved from the liability.

12. The learned Counsel for the respondents submitted that the petitioners in the claim petitions and deceased Antony were travelling in the goods vehicle as authorised representatives of the owner of the goods carried in that vehicle and as such the appellant Insurance Company is liable to pay compensation for the injuries sustained to the petitioners and for the death of Antony.

13. Ext.B 1 is the copy of the policy issued by the appellant Insurance Company in respect of the goods vehicle involved in the accident. In that policy it is stated that the vehicle can be used only for carriage of goods within the meaning of the Motor Vehicles Act, 1988 and the policy does not cover the use of carrying passengers in the vehicle except employees (other than the driver) not exceeding six in number, coming under the purview of Workmen's Compensation Act, 1923.

14. In the decision reported in [Salija Vs. Unnikrishnan](#), it was held that eventhough statutory liability cannot be more than what is required under the Statute itself there are no provisions in the Act prohibiting the party from continuing to create higher liability to cover wider risk. The learned Counsel for the appellants submitted that admittedly at the time of the accident no goods were carried in the goods vehicle and as such the protection given under the Statute to the owner or his representatives of the goods carried in the vehicle will not be available to the claimants in O.P.(M. V)s.

15. The learned Counsel for the respondents submitted that this argument has no force in view of the decision reported in [United India Insurance Company Ltd. Vs. Suresh](#), , in which it was held that:

The policy shall cover the owner of the goods or his authorised representative who dies or suffers any bodily injury while travelling as passenger in a goods carriage. The language of the amended provision does not show that the owner or the representative must accompany the goods in order to come within the purview of that clause. It is rather common that the owner of the goods or his representative who hires the vehicle travels in the hired vehicle from the place of hiring to the place where the goods are to be loaded into the vehicle and then proceeds to travel along with the goods. It is also common that after unloading the goods such passengers travel in the same vehicle to the place from where they commenced journey. The amended provision makes it explicitly clear that the word "carried" qualifies the owner of goods or his representative and not the goods carried. The owner or the authorised representative need not invariably be shown to accompany the goods, at the time of accident causing injury to or resulting in the death of the passenger who is either the owner of the goods or the authorised representative of the owner of the goods.

16. In the present case, it has come out in evidence that the petitioners in O.P.(MV) Nos. 1444 and 1467 of 2001 were travelling in the offending vehicle standing on the platform of the goods vehicle and deceased Antony was inside the cabin of the vehicle at the time of the accident. The injured persons and the deceased were travelling in the goods vehicle as loading and unloading workers as well as Mason engaged in the actual work of carrying goods transported in that vehicle and thereafter returning in that vehicle after unloading the goods to the place from where the owner of the goods hired the offending vehicle. Therefore, we are of the view that they cannot be termed to be unauthorised or gratuitous passengers in the insured vehicle till they reach the place, from where the owner of goods had hired the insured vehicle.

17. In the decision reported in [National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others](#), it was held that the owner of the goods means only the person who travels in the cabin of the vehicle. Since deceased Antony was travelling in the cabin of the vehicle as representative of the owner of the goods, the appellant Insurance Company is liable to indemnify the owner of the vehicle for the compensation payable to the legal heirs of deceased Antony, who are petitioners in O.P. (M.V.) No. 1495 of 2001. Since the second respondent in the claim petition, who is the driver of the vehicle, was not possessed of a valid driving licence at the time of the accident, the Insurance Company, though liable to indemnify the claim is entitled to claim reimbursement of the compensation amount payable in that claim petition.

18. Therefore, M.A.C.A 1471 of 2001 filed against the Award in O.P.(M.V.) No. 1495 of 2001 is liable to be dismissed. As far as the petitioner in O.P.(M.V.) No. 1444 of 2001 and the petitioner in O.P.(M.V.) No. 1467 of 2001 are concerned they are travelling in the goods vehicle outside the cabin and on the platform and they cannot be treated as representatives of the owner of the goods, in view of the above decision of the Supreme Court and as such the appellant Insurance Company is not liable to indemnify the owner of the vehicle in respect of the claim of the petitioners in those claim petitions. Therefore, M.A.C.A. 1466 of 2005 and 1479 of 2005 are to be allowed and the appellant Insurance Company is to be exonerated from liability in O.P.(M.V.) Nos. 1444 and 1467 of 2001.

19. Accordingly M.A.C.A. 1466 of 2005 is allowed and the appellant Insurance Company is exonerated from liability in O.P. (M.V.) No. 1444 of 2001. M.A.C.A. No. 1479 of 2005 is allowed and the appellant Insurance Company is exonerated from liability in O.P. (M.V.) No. 1467 of 2001. M.A.C.A. No. 1471 of 2005 is dismissed and the award in O.P. (M.V.) No. 1495 of 2001 is confirmed. The parties are directed to suffer their respective cost in these appeals.