

(2000) 01 KL CK 0018

High Court Of Kerala

Case No: M.F.A. No. 677 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

Pierce Leslie India Ltd. and
Others

RESPONDENT

Date of Decision: Jan. 3, 2000

Acts Referred:

- Motor Vehicles Act, 1988 - Section 95(1)(b)(i)

Citation: (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365

Hon'ble Judges: S. Marimuthu, J; P.A. Mohammed, J

Bench: Division Bench

Advocate: P.N.K. Achan, for the Appellant; C.N. Ramachandran Nair, Antony Dominic and Thomas Antony, for the Respondent

Final Decision: Dismissed

Judgement

P.A. Mohammed, J.

The main question that arises for decision in this appeal is whether the appellant United India Insurance Co. Ltd. is liable to indemnify the owner of the vehicle for the compensation awarded by the Tribunal.

2. The facts required for decision can be summarised thus: The respondent No. 1, Pierce Leslie India Ltd., filed O.P. (M.V.) No. 862 of 1988 claiming a sum of Rs. 50,998 as damages caused to the property in the accident occurred on 3.2.1988. The lorry bearing registration No. KED 477 owned by the respondent No. 2 was allowed to be taken inside the factory and to unload coffee. While so unloading it hit against one of the buildings of the factory and thus damage was caused. After the enquiry the Tribunal found that the accident had taken place on account of the negligent driving of the lorry by the respondent No. 2. It accordingly fixed a sum of Rs. 50,998 as compensation for the damage sustained to the building. It further found that the appellant was liable to indemnify the owner of the lorry for the compensation

awarded. Being dissatisfied with the award the present appeal has been filed by the insurance company.

3. Section 95(1)(b)(i) is the relevant provision, which is as follows:

95. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(Emphasis added)

The word "public place" has been defined in Section 2 (24) as follows:

"public place" means a road, street, way or other place, whether a thorough fare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

4. The main argument advanced by the counsel is that the accident took place in a private place and, therefore, the above provision would not apply. A Division Bench of this court where one of us {Mohammed, J.} was a party had occasion to deal with an identical question in *United India Insurance Co. Ltd. v. Lakshmi* 1997 ACJ 489 (Kerala). After quoting the observation of Barry, J. in *R. v. Kane* (1965) 1 All ER 705, the Division Bench said:

In substance, a place is a "public place" though it is private property when it is shown that the public are in the habit of resorting to it and no one is prevented therefrom so resorting to it.

As far as the present case is concerned, what we could gather is that the contract between the owner of the lorry and the owner of the factory was to deliver the goods at the factory premises. When the lorry with the goods reached the gate of the factory it was allowed to go inside and offload the goods at the premises of the factory. When such permission is granted then the transport of goods inside the premises of the factory cannot be treated to be a transport in a private place.

5. In this context, we may refer to the decision of the Supreme Court in [Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others](#), where the "comprehensive policy" has been defined. Para 5 of the above decision is relevant and hence it is extracted hereunder:

In the present case, the policy is admittedly a "comprehensive policy". "Comprehensive insurance" has been defined in Black's Law Dictionary, 5th Edn., as "All risk insurance" which in turn is defined as follows:

"Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. *Miller v. Boston Ins. Co.*, 218A 2d 275, 278, 420 Pa 566. Type of policy which protects against all risks and perils except those specifically enumerated".

It is worthwhile to note that the policy involved in this case is a comprehensive policy and that is evident from Exhs. B-1 and B-2.

6. In *Madarsab Saheblala Kattimani v. Nagappa Vittappa Katabugol* 1982 ACJ 279 (Karnataka), the Division Bench observed as follows:

Thus, it becomes obvious that requirements of Chapter VIII, viz., insurance of motor vehicles against third party risks, an Act policy covers compensation with regard to bodily injury or death of a third party in a public place. Therefore, if what is issued by the company is nothing more than the Act policy as contemplated u/s 95 of the Act, it can safely be concluded that the company is not liable to indemnify the owner in case of bodily injury or death of a third party arising out of the use of the motor vehicle not in a public place but in a private land.

However, the court after considering the terms of the policy observed that the clear intention of the insurer is to cover liability with regard to third party risks arising out of the use of motor vehicles even in a private land if such liability is incurred by the insured legally. We need not examine the terms of the policy in the present case inasmuch as the policy in this case is a comprehensive policy admittedly.

7. In view of what is said above, we are inclined to dismiss the appeal and confirm the impugned award passed by the Tribunal. The appeal is accordingly dismissed.