New India Assurance Co. Ltd. Vs Sraju

Court: High Court Of Kerala

Date of Decision: July 25, 2001

Acts Referred: Insurance Act, 1938 â€" Section 64
Motor Vehicles Act, 1988 â€" Section 146, 146(1), 147, 147(3), 147(5)

Citation: (2001) 3 ILR (Ker) 384

Hon'ble Judges: S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench: Division Bench

Advocate: P.R. Ramachandra Menon, for the Appellant; P.G.P. Panicker, A. Sandeep, P.C. Sasidharan, O.V. Maniprasad and P.V. Jyothi Prasad, for the Respondent

Judgement

S. Sankarasubban, J.
All these appeals are filed against the common award in O.P. (MV) Nos. 2002/95, 540/96 and 541/1996 on the

file of the Motor Accidents Claims Tribunal, Ottappalam. Appellants in these appeals are the New India Assurance Co. Ltd. Along with the above

claim applications, O.P. (MV) Nos. 538 and 539 of 1996 were also filed. The amount awarded under those claims was very small and no appeal

have been filed against it. The facts of the case are as follows:

2. Petitioners in these claims seek compensation for injuries sustained to them in a motor accident. The accident occurred on 25.6.1994 at 12.00

hours at a place called Mambattapadi within Shoranur Police Station limit. A Jeep No. KL 10 5207 driven by the driver came from southern

direction along the road at the place of accident and hit at the Autorickshaw bearing No. KL 10A 25566 driven by fourth respondent and that

came from opposite direction. As a result of collision, the Autorickshaw ran out of control and knocked down the pedestrians before it capsized.

Petitioners in O.P. (MV) Nos. 539 and 540 of 1996 were the passengers travelling in the Autorickshaw. All the petitioners sustained injuries of

varying nature.

3. The accident occurred, according to the claimants, due to the rash and negligent driving of respondents 1 and 4, drivers of the Jeep and

Autorickshaw. The claimants claimed compensation of varying amounts from the drivers of the Jeep and Autorickshaw, the owner and insurer

respectively of both vehicles. The third respondent, the insurer of Jeep denied policy coverage to vehicle involved in the accident. It was contended

that even though a policy was issued, it was later cancelled since the cheque issued by the second respondent-owner towards premium clearance

was dishonoured. Thus, the Insurance Company denied its liability to indemnify stating that there was no valid policy in force insuring the Jeep

involved in the accident. The owner and driver of the Autorickshaw contended that the accident occurred due to the negligence of the driver of the

Jeep and not the Autorickshaw. It was further submitted that the Jeep was insured with the Oriental Insurance Company and the Oriental

Insurance Company is liable to indemnify the claimants.

4. The Tribunal raised three points for consideration. The first point was at whose fault and negligence the accident occurred. This point was

common to in all these cases. This issue is discussed in paragraphs 11 to 14 and it was found that the accident took place due to the rash and the

negligent driving of the driver of the Jeep. The second question was whether the petitioners are entitled to compensation from respondents? If so,

from whom and for what amount? Regarding the compensation, it was found that the petitioner in O.P. (MV) No. 2002 of 1995 is entitled to a

sum of Rs. 16,329/- towards compensation. The petitioner in O.P. (MV) No. 540 of 1996 is entitled to Rs. 15,752/- towards compensation and

the petitioner in O.P. (MV) No. 541 of 1996 is entitled to Rs. 23,695/- towards compensation. Regarding the liability of the appellant/Insurance

Company, the Tribunal held as follows: ""3rd respondent denied indemnity liability contending that the policy issued by it was subsequently

cancelled on dishonouring of premium payment cheque issued by 2nd respondent. So it disowned liability contending that there is no valid policy

coverage to jeep involved in the accident."" This contention was repelled by stating that the respondent cannot hold good in view of the decision of

this Court reported in Oriental Insurance Co. Ltd. v. Inderjit Kaur, 1998 (1) KLT SN page 27. By reason of S. 147(5) and S. 149(1) of the

Motor Vehicles Act, the Company became liable to indemnify the third party in respect of liability covered by policy. Insurance of a policy by third

respondent amounts to a representation to the general public regarding the indemnity liability. It cannot be altered unilaterally though the contract is

unsupported by consideration. Therefore, the Tribunal held that the third respondent is liable to indemnify the claimants.

5. An appeal was filed against the rejection of the Insurance Company''s contention regarding its liability, as the policy has been cancelled.

According to the Insurance Company, the policy was cancelled before the accident had occurred. The case of the Insurance Company is that the

accident occurred on 25.6.1994. There was no policy in existence. Since there was no policy in existence, the Insurance Company is not liable to

pay the amount.

6. The Tribunal relied on the decision of the Supreme Court reported in Oriental Insurance Co. Ltd. v. Inderjit Kaur & Ors. AIR 1998 SC 585. In

that case what happened was that a bus met with an accident. Its policy of insurance was issued by the appellant on 30th November, 1989. The

premium for the policy was paid by cheque. The cheque was dishonoured. A letter stating that it had been dishonoured was sent by the appellant

to the insured on 23rd January, 1990. The letter claimed that, as the cheque had not been encashed, the premium on the policy had not been

received and that, therefore, the appellant was not at risk. The premium was paid in cash on 2nd May, 1990. In the meantime, on 19th April,

1990, the accident took place, the bus collided with a truck, whose driver died. The appellant denied the liability stating that under S. 64-VB of

the Insurance Act, 1938, no risk was assumed by an insurer unless the premium thereon had been received in advance. Rejecting this contention,

the Supreme Court held as follows:

Chapter 11 of the Motor Vehicles Act, 1988 provides for the insurance of motor vehicles against third party risks. S. 146 thereunder states that

no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the

vehicle a policy of insurance that complies with the requirements of the Chapter. S. 147 sets out the requirements of policies and the limits of

liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer"".

The Supreme Court then referred to S. 147(5) and S. 149 of the Motor Vehicles Act and held as follows:

We, have therefore, this position. Despite the bar created by S. 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy

of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Ss. 147(5) and 149(1) of the Motor Vehicles

Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of

compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy.....

The Court further held thus: ""The policy of insurance that the appellant issued was a representation upon which the authorities and third parties

were entitled to act. The appellant was not absolved of its obligation to third parties under policy because it did not receive the premium. Its

remedies in this behalf lay against the insured"". The Supreme Court did not express any opinion on the application under S. 149 regarding the

entitlement of the Insurance Company to cancel the policy. The facts of the above case show that at the time of accident, the policy has not been

cancelled, even though the policy was not supported by any premium. But the Supreme Court, on the basis of the provisions of the Motor Vehicles

Act, held that the Insurance Company was liable to indemnify the third parties. Subsequently the Supreme Court had occasion to deal with a

similar question in New India Assurance Co. Ltd. Vs. Rula and Others, In that case, the appellant insured the respondent''s truck on 8.11.1991

and issued an insurance policy in terms of the requirements of the Motor Vehicles Act, 1988. The same day, the truck met with an accident

culminating in death of three persons. However, about a week later the cheque, by which the respondent had paid the premium, bounced and

consequently, the appellant cancelled the policy. The dependants of the deceased persons filed claim cases before the Motor Accidents Claims

Tribunal, which overruled the appellant''s objections and awarded compensation in each case. The High Court dismissed the appellant''s appeals.

Before the Supreme Court, placing reliance on various provisions of the Contract Act, 1872, the appellant contended that on account of bouncing

of the cheque there was a failure of consideration and as such no contract of insurance came into existence as between the insurer and the insured.

Further, under S. 64-VB of the Insurance Act, no risk would be assumed unless premium was received in advance. Rejecting this contention, the

Supreme Court held that a contract of insurance, like any other contract, is concluded by offer and acceptance. Normally, a liability under the

contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the insurance policy taking

effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer. But the contract of insurance in respect of

motor vehicles has to be construed in the light of Ss. 146(1), 147(5) and 149(1) of the Motor Vehicles Act, 1988. The manifest object of S.

146(1), which contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter XI

of the Act is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of

the vehicle any recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the

injuries. Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a

party to the contract of insurance but is, nevertheless, protected by such contract. Therefore, the third party is not concerned and does not come

into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concerned with the fact that there

was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third

party against the insurer. Thus, it was held in that case that the Insurance Company was liable. In paragraph 13 of the above decision, the Supreme

Court held as follows:

The consequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was

dishonoured, would not affect the rights of the valid party which had accrued on the insurance of the policy on the date on which the accident took

place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the

Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the

insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party"".

7. So far as the present appeals are concerned, the accident occurred after the cancellation of the policy. The question therefore is whether since

the policy has been cancelled can the respondent rely on the decisions referred to supra. Learned counsel for the appellant contended that for

payment by the Insurance Company, existence of a policy is a must. If the policy is not in existence, then there is no liability to pay the amount

notwithstanding that such a policy was previously issued. Thus, according to the learned counsel for the appellant, there cannot be any dispute that

on the date of accident, there should be a policy. Supposing the owner of the vehicle had failed to take a policy on the date of the accident the

Insurance Company cannot be compelled to pay amount. In the same way, learned counsel contended that supposing an insurance policy which

has already been issued was cancelled and was not in existence on the date of the accident, then the Insurance Company will not be liable to pay

amount. S. 146 of the Motor Vehicles Act states as follows: ""No person shall use, except as a passenger, or cause or allow any other person to

use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case

may be, a policy of insurance complying with the requirements of this Chapter"". Thus, the Section clearly states that there should be in force a

policy. S. 149 of the Motor Vehicles Act states that if, after a certificate of insurance has been issued under Sub-s. (3) of S. 147 in favour of the

person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under

clause (b) of sub-s.(1) of S. 147 being a liability covered by the terms of the policy or under the provisions of S. 163-A is obtained against any

person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy,

the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum

assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and

any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

8. According to us, S. 149 of the above Act does not help the present claimants in the present case. It only states that if a judgment has been

passed by the Tribunal, notwithstanding the fact the policy of insurance is liable to be cancelled then there is a liability to discharge the amount due

to the insured. According to us, for a liability of the Insurance Company, there should be in existence of a policy. That policy may not be supported

by consideration. But so long as the policy exists and if an accident occurs before its cancellation, the Insurance Company is liable. But if the

accident occurs after the cancellation of the policy, then the Insurance Company is not liable to pay the amount.

9. In the present case, the accident took place on 25.6.1994. It is seen that the policy was issued on 31.5.1994. The premium of the policy was

given by cheque. Ext. B1 is the cheque. It is dated 31.5.1994. Ext. B2 is the intimation from the Bank stating that the cheque was dishonoured.

Ext. B3 is the endorsement showing that the policy has been cancelled. Ext. B4 is the letter dated 17th June 1994 by which it is stated that the

policy issued is cancelled, since the premium cheque of the insured has been dishonoured by the Bank. Ext. B6 is the communication dated 17th

June, 1994 stating that the insurance policy issued to the owner has been cancelled. Thus, it can be seen that the policy was not in existence of the

date on which the accident occurred.

10. In the above view of the matter, we modify the award of the Tribunal. The liability of the appellant-Insurance Company in these three cases is

absolved with regard to the award challenged in the appeals.

11. Appeals are disposed of as above.