

D. Chandrappa Vs. Smt. K. Sunanda and Others

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Court : Karnataka

Decided On : Feb-08-1995

Reported in : II(1995)ACC568; 1996ACJ283; AIR1995Kant384; ILR1995KAR1831; 1995(2)KarLJ455

Judge : M.F. Saldanha, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95

Appeal No. : M.F.A. 2550 of 1987

Appellant : D. Chandrappa

Respondent : Smt. K. Sunanda and Others

Advocate for Def. : G. Kasturi, ;Thentadhara and ;B.T. Mohan Adv.

Advocate for Pet/Ap. : Sriyuths B.G. Naik and ;C.S. Shantamallappa, Adv.

Judgement :

1. Heard learned advocates representing the appellant, owner of the vehicle, the insurance company and the original claimant. The entire controversy in this appeal is limited to the question as to whether the insurance company can be saddled with the unlimited liability or in other words, whether the insurance company is required to pay the whole of the amount awarded as compensation or whether the liability is limited to Rs. 30,000/- as contended by them. In this case which

pertains to a fatal accident the award was for Rs. 82,934/- with costs and interest at 9% per annum. The claimants had received Rs. 15,000/- as interim compensation and therefore the final award was for a sum of Rs. 67,934/- along with costs and interest. The insurance company had contended that even though an additional premium had been paid and the passengers one of whom was the deceased were separately covered, that their liability was limited to Rs. 30,000/- because this is the cover that is extended for a premium of Rs. 30/-. This plea was upheld by the learned trial Judge despite the fact that the insurance policy clearly minions that a liability vis-a-vis the passenger was unlimited. I need to record here that the Branch Manager of the Insurance Company has given evidence and he has sought to say that under the rules then prevalent, an additional cover per passenger can be taken out but that this is limited to Rs. 30,000/- per passenger where the premium is Rs. 30/-. He has stated that this is under the tariff rules of the company and he has also produced at Ex.R-2 the copy of the tariff rules which support him as far as this contention is concerned. Consequently, he contended that the reference to the unlimited liability in the insurance policy is a typographical error and that the court should accept the insurance company's contention that the cover per passenger was only Rs.30,000/- and not unlimited. This plea found favour with the learned trial Judge who limited the liability of the insurance company to Rs. 30,000/-. The award has been challenged through the present appeal by the owner of the vehicle,

2. The appellant's learned advocate has advanced a strong plea that the learned trial Judge was totally in error in having absolved the insurance company from the full liability. According to him, the owner was conscious of the fact that the passengers required insurance cover which was why he paid an ' additional premium and pursuant to that, the document was issued to him which in unequivocal terms indicated that the liability of the insurance company was unlimited as far as the passengers were concerned. He contended that in these circumstances the insurance company cannot come forward with any explanations at the stage when a liability has arisen and seek to give a go-by to the clear terms of the policy. In sum and substance, his argument proceeds on the footing that the policy represents the contract between the parties and that it fully binds the insurance company. He further contends that there is no limit to the liability of a

insurer in these circumstances and to that extent it is his submission that even in the decision reported in 1992 ACJ 319, in the case of New India Assurance Co. Ltd., it was held that a Court would be fully justified in refusing to accept any explanations that may subsequently seek to limit the liability. In that case also, the same contention was taken up namely that the reference to the word 'unlimited' was a typographical error and the court rejected this defence.

3. Appellant's learned advocate also relies on an earlier decision of this court reported in ILR 1986 (2) Kant 2660, in the case of Oriental Fire & General Insurance Company v. Jagdish Babu. In that decision, the Court had held that nothing precluded the insurance company from undertaking a larger liability and since the columns in the policy were blank the court held them to signify that the liability was unlimited. Appellant's learned advocate submits that he is in a stronger footing in this case because according to him there is a clear representation that the liability was unlimited.

4. In the midst of this controversy, the claimants' learned advocate has submitted that despite the accident having taken place on 9-10-84 and the court having made its award on 29-7-87, that up to the present point of time his clients have not received the compensation. The deceased was an Asstt. School Teacher and the entire family was depending on him, the claimants being his widow and minor children and he therefore submitted that the insurance company be directed to pay up the balance amount.

5. The main challenge has come from the learned advocate who represents the insurance company. It is his basic submission that the Court should not only go by one typed sentence that appears in the policy but should take cognizance of the fact that this policy was issued pursuant to the tariff rules of the company. It is his case that if an error has occurred while typing out certain columns in the policy and if it is demonstrated from the tariff rules of the company that this is so, then the court must then scrutinise as to what would be the cover that the company normally provides for a prescribed payment of additional premium. He states that where admittedly an additional premium of Rs. 30/- was paid, that the insurance company would cover only an amount of Rs.30,000/- per passenger because this

is what the tariff would provide for. His additional statement is that the officer of the company has given evidence, that he has produced the tariff rules at Ex. R-2 and that his evidence has not been found to be either untrustworthy or unreliable, that it has hardly been ever disputed and that in these circumstances, the order passed by the trial Court does not deserve to be interfered with.

6. The learned advocate has also pointed out that there may be no dispute about the fact that the insurance company can in given circumstances cover unlimited liability but in that case, the premium payable will be considered high. The argument therefore is to the effect that when the premium of Rs. 30/- was paid, that the liability could only have been Rs. 30,000/-.

7. The short question is as to whether, on the facts of this case, the insurance company should be directed to pay the entire compensation amount that has been awarded.

8. The fact that the owner had covered the passengers through the policy in question cannot be disputed. The insurance company has not demonstrated in the course of the proceedings that it was brought to the notice of the owner that if he pays a premium of Rs. 30/-, that the liability of the passengers will be limited to Rs. 30,000/- only. The aspect with regard to the typographical error to my mind is secondary because a court would normally go by the face value of the insurance policy. That policy mentions in no uncertain terms that the liability of the insurance company was unlimited. Under these circumstances, it is that document which has got to be construed as the contract between the parties and I am in agreement with the appellant's learned advocate when he points out that in this document, there was no occasion for the owner of the vehicle to have so much as known that the insurance company was held partially covering the liability as far as the passengers are concerned to the extent of Rs. 30,000/-. It is quite clear from the fact that the additional cover was taken even for the passengers, which is rarely done, that the owner specifically desired that the insurance company must cover their liability in the event of an accident or injury. Under these circumstances in the absence of it being demonstrated that it was to the knowledge of the owner and that it was brought to his notice that the liability had limits, and that he had agreed

to this, which is not the case on the record before me, it would be difficult for the insurance company to now sustain the plea that their liability was limited. The tariff rules that are sought to be relied upon now are something within the internal knowledge of the insurance company and it is nobody's case that these were even made known to the appellant. I do not see under these circumstances as to how the insurance company expects a court to regard the clear terms of the policy and to rely on some documents that were never to the knowledge of the person who had taken out the policy. It is not a question as to whether the endorsement in the policy was deliberate or accidental. The real question is as to whether they bind the insurance company. To my mind, that document is a sacrosanct and the terms of the policy fully and completely bind the insurance company. Under these circumstances, the learned trial Judge was clearly in error in having accepted the defence put forward by the insurance company and in having limited the liability to Rs.30,000/-.

9. The appeal accordingly succeeds. The award in question stands modified to the limited extent that it is directed that the entire amount payable to the claimants under that award shall be the liability of the insurance company. Having regard to the fact that this is an extremely old case and the fact that no amount has so far been deposited in Court except the interim payment that was made, the insurance company is directed to deposit the rest of the amount due to the claimants within a period of eight weeks from today. The claimants are permitted to withdraw the said amount immediately on the same being deposited. The claimant No. 1 is the wife and claimants 2 to 5 are the children. Out of the amount deposited; claimants 2, 3, 4 and 5 shall be paid a sum of Rs. 10,000/-, each and the whole of the balance amount shall be paid to claimant No. 1 who is the wife of the deceased. It is clarified that the order passed by the Tribunal with regard to the interest, costs etc. stands confirmed. Appeal disposed.

10. Appeal allowed.