

Mathew Joseph Vs. Janaki

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Court : Kerala

Decided On : Jan-23-2007

Reported in : II(2007)ACC140; 2007ACJ912; AIR2007Ker117

Judge : V.K. Bali, C.J.,; M. Ramachandran and; S. Siri Jagan, JJ.

Acts : [Motor Vehicles Act, 1939](#); [Motor Vehicles Act, 1988](#) - Sections 95, 95(1), 95(2), 146, 147and 147(1)

Appeal No. : M.F.A. No. 502 of 1999

Appellant : Mathew Joseph

Respondent : Janaki

Advocate for Def. : Mathews Jacob, Adv.

Advocate for Pet/Ap. : Raju Joseph, Adv.

Judgement :

Ramachandran, J

1. This reference has come up before us in terms of the reference order of a Division Bench dated 12-09-2006. The Motor Accidents Claims Tribunal, Thodupuzha had directed award of compensation to the legal representatives of a deceased individual. It was on a finding that a private jeep, wherein he was a traveller, was driven in a negligent manner resulting in the accidental death. The

jeep had been registered as a private vehicle, but the finding was that it was used for hire and there was violation of the policy conditions. The Tribunal held that the vehicle owner is liable to pay the amount of compensation, although the initial liability for payment was on the insurer. The insurance company normally would have been liable, however, but was entitled to be exonerated, according to the Tribunal, as there was violation of the policy conditions. It would have been therefore possible for them to proceed against the vehicle owner for reimbursement. The appeal has been filed by the vehicle owner principally contending that the finding about the violation of the policy conditions was without justification. It had been further contended that under Section 147 of the Motor Vehicles Act, the insurer was liable to indemnify him in view of the comprehensive policy taken by him.

2. The accident had taken place on 09-01-1995. While the matter was being heard, the Division Bench expressed a doubt as regards the relevancy and impact of certain decisions, and the possible conflict, which might have been there, while adverting to and relying upon them. This is principally because, if the argument of the appellant was acceptable, the deceased could have been treated as a gratuitous passenger. With respect to the liability of the insurer, in such cases, according to the learned Judges, there might have been conflict between the view taken by a Full Bench of this Court reported in *Oriental Insurance Co.Ltd. v. Ajayakumar* 1999 (2) KLT 886-FB on the one hand and *United India Insurance Co.Ltd. v. Tilak Singh* 2006 (2) KLT 884-SC. The later decision was one following the judgment of the Supreme Court in *New India Assurance Co.Ltd. v. Asha Rani and Ors.* 2003 (1) KLT 165-SC. The reference order concluded as following:

The Apex Court in the above decision just followed the decision in *New India Assurance Co.Ltd. v. Asha Rani and Ors.* 2003

(1) KLT 165-SC and stated that statutory policy will not cover the death or bodily injury suffered to gratuitous passengers. Learned counsel for the appellant referred to the decision of the Supreme Court in *Asha Rani's case* (supra) and submitted that *Asha Rani's case* (supra) related to coverage of passengers in a goods vehicle. However, it classifies the claims into three categories i.e.

(1) cases covered under the provisions of the Motor Vehicles Act, 1939

(2) cases covered under the provisions of the M.V.Act, 1988 prior to the amendment in 1994 and

(3) cases covered under the M.V.Act, 1988 after the amendment in 1994. It was pointed out that in Tilak Singh's case (supra) the accident occurred on 23.3.1989, i.e. before 1988 Act came into force on 1.7.1989 when the 1939 Act was in force and it will come under the first category and there is no dispute that in the first category cases passengers are not covered even as per earlier decisions of the Apex Court. However, there is no decision with regard to the second or third categories for liability of insurance company for passengers in a private vehicle after the introduction of new 1988 Act which came into force with effect from 1.7.1989 and after the amendment of the above Act in 1994. Since already there is a Full Bench decision of this Court and large number of cases are pending and insurance company is taking the stand that in view of the decision in Tilak Singh's case (supra) the Full Bench decision is no more good law, we are of the opinion that the matter should be reconsidered by the Full Bench. Hence, we adjourn the matter to be placed before the Hon'ble Chief Justice for appropriate orders.

3. Mr.Mathews Jacob, senior counsel appearing on behalf of the 5th respondent--insurance company, submitted that as violation of policy conditions also is highlighted and accepted already by the Tribunal, after answering the reference it may be proper that the matter be remitted for consideration on merits appropriately. Mr.Raju Joseph appearing for the appellant has no objection to this course to be adopted.

4. From the submissions that have been made at the bar, basically three positions require to be taken notice of. The first was in respect of the situation as available in 1939 Act, whereunder Section 95 governs the situation. During 1988, the Act had been thoroughly revamped and drastic amendments were brought in, including requirement of policies and limits of liability coming under Section 147 of the M.V.Act. Section 147 underwent subsequent changes, in view of the amendment brought in the year 1994. We have to note that the three decisions, to which advertence was made in the order of reference, related to claims which

were to be governed by law prevailing before the 1994 amendment. A victim of an accident, by way of collision between a tempo van and a jeep, on 08-02-1991 had filed a claim during 1991, which led to the decision of the Full Bench in Ajayakumar's case 1999 (2) KLT 886. The cause of action, which led to the decision reported in 2003 (1) KLT 165-SC (Asha Rani's case) was in respect of an accident which occurred after the amendment of 1988, but before the introduction of 1994 amendment. It was a claim in respect of a person, who while travelling in a goods vehicle had met with death due to an accident, in which the vehicle was involved. The later judgment in 2006 (2) KLT 884 (Tilak Singh's case) was also a case of a pillion rider of a scooter, who had died in a road accident.

5. Mr. Mathews Jacob submits that in none of the above cases the position as might be available after the 1994 amendment was relevant, although of course decisions had come after third amendment. According to him, therefore, perhaps only the guidelines generally laid down might be available and this was heavily loaded in favour of the insurer, where it had been consistently observed that a gratuitous passenger in a private/goods vehicle will not be entitled to claim insurance benefits. Although a contra view might be gatherable from the Full Bench, the observations in the later judgments sufficiently obliterated the findings that had been entered into there. According to the counsel, more guidance would be obtained from a decision in National Insurance Co.Ltd. v. Baljit Kaur 2004 (1) KLT 938 SC, where it had been held that gratuitous passengers in a goods vehicle may not be eligible to be compensated by an insurer as the Court in unambiguous terms indicated that 'any person' as appearing in the section would not cover a gratuitous passenger in a goods vehicle. Here also the discussions are in respect of a passenger in a goods vehicle. It may be necessary to tackle the issue also taking notice of the circumstance here that it was a motor car in which passengers were permitted to travel, gratuitous or otherwise. The Full Bench decision of course deals with the issue direct, but we have to examine as to whether the observations of the Full Bench are to be deemed as no more to be considered as valid interpretation by the impact of the later decisions of the Supreme Court in Asha Rani's case and Tilak Singh's case (cited supra).

6. As referred to earlier, the date of accident in Asha Rani's case was at a time when 1988 position was in force. The claim had been decreed by the Tribunal and reliance had been placed on *Mallawwa and Ors. v. Oriental Insurance Co.Ltd and Ors.* : AIR 1999 SC589 for the purpose. The insurer carried the matter in appeal to the High Court, but it had been disposed of by the Court observing that the decision in *New India Assurance Company v. Satpal Singh and Ors.* : AIR 2000 SC235 was authority for the finding as above. It was in that circumstance the Special Leave Petition had been filed. The Court thereupon had held that Satpal Singh's case should be considered as not correctly decided and therefore the judgment of the High Court as well as the Tribunal required to be set aside. Insurer will not be therefore liable, it was held, for payment of compensation to the owner of goods or his authorised representative, who was being carried in a goods vehicle, when it meets with an accident. It may not be necessary to go in detail to the law that was there, especially since we are not concerned about the issue whether a passenger on a goods vehicle was liable to be compensated, especially since the position has been changed by 1994 amendment, whereby such persons are brought under compulsory coverage. Simultaneously, we have to note the observations made by the Honourable Mr.Justice S.B.Sinha, in his concurring judgment, where His Lordship had highlighted the subtle changes that had been made in the definition of 'goods vehicle'. Although in paragraph 9 of the main judgment, it had been observed that Section 95(1) of the unamended Act unequivocally stated that the policy shall not be required in cases of a goods vehicle, Mr.Justice Sinha had apparently reservations about it, when it had been highlighted that the very definition of 'goods vehicle', earlier was widely worded as one capable of including carriage of goods solely or in addition to passengers. The learned Judge had thereupon noted that by the 1988 amendment 'goods carriage' was defined as any motor vehicle constructed or adapted for use solely for the carriage of goods. Consequently, it had also been held that carrying of passengers in goods carriage is not contemplated in 1988 Act.

7. The decision of the Full Bench in *Ajayakumar's case* 1999 (2) KLT 886, as referred to earlier, was not in respect of passengers in a goods carriage, but the scope and purport of 'any person' as appearing in Section 147 was being examined there. Section 95 of the unamended Act required a policy of insurance

issued by a person who is an authorised insurer insuring a person or classes of persons specified in Sub-section (2) of the Act. This should have been 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. In respect of a public service vehicle, insurance should have been there against the death of or bodily injury to any passenger caused by or arising out of the use of the vehicle in a public place.

8. By the amendment brought about in 1988, the insurance was to be 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. By the 1994 amendment, Section 147(1)(b)(i) was amended to read as following:

Against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

The Supreme Court in Asha Rani's case (cited supra) had observed that:

It is no doubt true that some times the Legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute.

It was in the above premises, that Satpal's case was held as not correctly decided, since according to the Court the provision had been for the first time incorporated only thereby to cover owner of goods vehicle. If we read the Full Bench decision in this light, the impression gatherable is that the observations are not in consonance

with the later judgment of the Supreme Court. We have to note that although this was a provision in respect of a goods vehicle, the expression 'any person' nevertheless has been given a restricted meaning by the later judgment. That was obviously taking notice of the circumstance that an insurer was liable to compensate a person in respect of a liability anticipating which insurance premium had been paid.

9. The Act, by Section 146, generally requires coverage of compulsory insurance as against third party risks. Additionally, in view of Section 147, insurance coverage is mandatory, as far as specified groups and claims are concerned. No doubt the owner of the vehicle will have to compensate loss arising out of a variety of circumstances, but the statute does not interfere with his discretion to cover or not to cover such risks in a manner he decides. He can be confident of meeting the claims from his own funds; he may get insurance protection for any such contingencies. The decision is expected to be taken by him, and an insurer can be answerable only to the risks about which coverage has been sought for and secured, of course in consonance with public policy and accepted parameters. The limits spoken to by Sub-section (2) also necessarily will have relevance only with respect to the coverage referred to in Section 147(1) alone.

10. Paragraph 29 of the decision in Asha Rani's case may be extracted herein below, to show the manner in which the issue had been approached:

An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Company v. Satpal Singh & Others* : AIR 2000 SC235 is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

The trend as above continues in the later decision in *Baljit Kaur's* case. The court had a duty to interpret a statute so as to reveal and explain its true import, and not to render the words of any provision as superfluous. It is held that:

The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words 'any person' could be held not to include the owner of the goods or his authorised representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.

Paragraph 20 of the judgment also highlights the finding as following:

Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect of passengers, especially gratuitous passengers, who were neither contemplated at the time the 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 Tilak Singh's case, as pointed out earlier, the deceased was a pillion rider. The Court had held that the decision in Satpal Singh's case had been found as unacceptable and had reiterated the observations made in Asha Rani's case. Though this case was in connection with liability while carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle as well. It was therefore held that Insurance Company owed no liability in respect of the accident suffered by the pillion rider, as the insurance policy was statutory and did not cover the risk of death of or bodily injury to a gratuitous passenger.

12. In view of our earlier observations, it cannot be perceived that observations in the Full Bench judgment continue to operate. There was available an 'Act only' policy to bank upon. The observations in paragraph 11 of the judgment in Oriental Insurance Co.Ltd. v. Ajayakumar 1999 (2) KLT 886 FB reads as following:

Therefore, it has to be taken that the term 'any person' referred in Clause (b)(i) would take in all passengers for hire or reward or otherwise. We do not find any

merit in the contention raised by the learned Counsel for the appellant that if the term 'any person' in Clause (b)(i) would take in passengers in private vehicle carried in for hire or reward then it was unnecessary for the Legislature to bring in the amendment under Act 54 of 1994 to include owner of the goods or his authorised representative carried in the vehicle in Clause (i).

The decision substantially had rested on *United India Insurance Company Limited v. Appukuttan* 1995 (1) KLT 807. Definitely later decisions have found that the expression 'any person' can have relevance only vis-a-vis a third party. So long as the view as above prevails, it may not be proper for this Court to hold that the observations made in the Full Bench judgment are to govern the situation. Appukuttan's case is to be deemed as wrongly decided. Gratuitous passengers in transport vehicles, including a motor cycle, can have coverage only when a comprehensive policy or extended policy as might be possible to be issued has been availed of by the owner of the vehicle. Only in such cases, the Insurance Company is required to compensate. We hold that the guidelines set by the Supreme Court are unambiguous viz., that payment of premium alone can cast a corresponding duty on the insurer for rendering coverage on any such group, when they are not required to be mandatorily brought under insurance protection.

The reference is answered as above. Place the appeal before the appropriate Bench, after four weeks.

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