

Salija Vs. Unnikrishnan

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Court : Kerala

Decided On : May-27-2004

Reported in : I(2005)ACC201; 2005ACJ280; 2004(2)KLT818

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 147 and 147(1); Motor Vehicles (Amendment) Act, 1994

Appeal No. : M.F.A. No. 925 of 1999

Appellant : Salija

Respondent : Unnikrishnan

Advocate for Def. : Mathews Jacob and; Varghese P. Thomas, Adv.

Advocate for Pet/Ap. : P.V. Chandra Mohan, Adv.

Judgement :

J.B. Koshy, J.

1. This appeal is filed against the award passed by the Motor Accidents Claims Tribunal, Thrissur in O.P.(M.V.) No. 1887 of 1993. The appellants are the widow and children of one Vijayan who died as a result of the injuries sustained in a motor accident.

2. The deceased Vijayan was travelling in a tempo van bearing Registration No. KL-3/990 driven by the first respondent accompanying his goods. He was on his way to Kanjangad for the work of spraying pesticides in a rubber estate and the vehicle was loaded with spraying machines. It is alleged that due to the negligence of the first respondent, the vehicle went out of control and fell on its side into a paddy field. The deceased sustained very serious injuries as a result of the accident. His bones all over the body including his vertebral column were fractured. The accident occurred on 9.5.1993 and Vijayan died on 30.7.1994 during the pendency of the claim petition.

3. The Tribunal found that the accident occurred due to the negligence of the first respondent - driver of the tempo van which was owned by the second respondent and insured by the third respondent. Against a claim of Rs. 5,00,000/-, the Tribunal awarded Rs. 2,27,500/-. The appeal is filed mainly on two grounds: (i) the quantum of compensation awarded is very low and (ii) the Insurance Company should not have been exonerated from liability as the deceased was carrying goods in the vehicle.

4. The deceased was aged 30 at the time of the accident. He left behind his young widow and two minor children. From the evidence available in the case, the Tribunal awarded Rs. 2,27,500/- as compensation which, in our opinion, is reasonable.

5. The next question is with regard to the liability of the Insurance Company to pay the compensation awarded by the Tribunal. In *New India Assurance Co. Ltd. v. Asha Rani and Ors.*, (2003) 2 SCC 223 = 2003 (1) KLT 165 (SC), the Supreme Court 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, 1988](#). After 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 vehicle (see also *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*, (2003) 2 SCC 339 = 2003 (1) KLT 583 (SC)). A contrary view was

expressed by the Apex Court earlier in *New India Assurance Co. Ltd. v. Satpal Singh*, (2000) 1 SCC 237 = 2000 (1) KLT 95 (SC). Since the decision in *Satpal Singh's* case was overruled by the decision in *New India Assurance Co. Ltd. v. Asha Rani and Ors.*, 2003 (1) KLT 165 (SC) = (2003) 2 SCC 223 in 2003 only, the Supreme Court by the decision in *National Insurance Co. Ltd. v. Baljit Kaur*, 2004 (1) KLT 165 (SC) = AIR 2004 SC 1340 held that in prior cases the Insurance Company shall pay the compensation awarded and recover the amount from the insured in execution of the award. In the light of the said decision, the Insurance Company shall deposit the amount awarded by the Tribunal in this case. (See also *Oriental Insurance Co. Ltd. v. Nanjappa and Ors.*, AIR 2004 SC 1630).

6. Now we will consider the question whether the Insurance Company on deposit of the compensation can recover the amount from the insured on the facts of this case and terms of the policy. Ext.B2 policy was produced in this case. It is a comprehensive policy. It is true that even if it is a comprehensive policy, insurance is governed by the terms of the policy, as held in *Amrit Lal Sood and Anr. v. Kaushalya Devi Thapar and Ors.*, (1998) 3 SCC 744. Ext.B2 policy shows that R. 100/- is collected from non-fare paying passengers as per IMT No. 14. It is the contention of the owner of the vehicle that the amount for non-fare paying passengers was paid so that owner or agents of the owner of the goods can travel in the vehicle as a non-fare paying passenger and it was collected as per the advise of the Tariff Commission. Full policy was not produced. A Constitution Bench of the Supreme Court in *New India Assurance Co. Ltd. v. C.M. Jaya*, 2002 (1) KLT 596 (SC) = AIR 2002 SC 651 held that even though statutory liability cannot be more than what is required under the statute itself, there are no provisions in the Act prohibiting the parties from continuing to create higher liability to cover wider risk. In such cases the insurer will be bound by the terms of the contract. Therefore, terms of the contract of insurance will govern the insured (see: *Dr. T. V. Jose v. Chacko P.M.*, AIR 2001 SC 3939 = 2001 (3) KLT 633 (SC)). In this case additional premium of Rs. 100/- was collected by the Insurance Company for non-fare paying passengers. The Apex Court also decided in *General Assurance Society Ltd. v. Chandmull Jain and Anr.*, AIR 1966 SC 1644 and *United India Insurance Co.Ltd. v. Pushpalaya Printers*, AIR 2004 SC 1700 = 2004 (2) KLT (SC) (SN) 52, that if there is any ambiguity on the terms of the insurance policy, one

that is beneficial to the insured should be accepted consistent with purpose for which policy is taken and premium is paid. When the document is ambiguous, it will go against the party who prepared the document. The Tribunal did not consider the terms of the contract of insurance which is not an act only policy. Hence, we are constrained to remand the matter. With regard to the terms of the policy, the Insurance Company and the insured are allowed to adduce further evidence before the Tribunal. It is for the Insurance Company to produce the full policy document before the Tribunal.

The appeal is allowed by way of remand. The third respondent- Insurance Company is directed to deposit the amount of compensation awarded by the Tribunal within three months from the date of receipt of a copy of this judgment. The question whether the Insurance Company can recover the amount from the insured shall be decided after considering the terms of the policy by the Tribunal. Since the accident occurred in 1993 and eleven years have passed, the claimants are allowed to withdraw the amount deposited in equal proportion. The matter in dispute is only between the Insurance Company and the owner of the vehicle in question. They shall appear before the Tribunal on 13.7.2004. The claimants are not required for further proceedings. The Tribunal shall decide the matter as expeditiously as possible.