Sasi Vs. Saidali

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Court : Kerala

Decided On : Jun-15-2005

Reported in : III(2005)ACC823; 2005(3)KLT496

Judge : K.A. Abdul Gafoor and; K.M. Joseph, JJ.

Acts : Motor Vehicles Act, 1988 - Sections 2(14), 2(44) and 2(46)

Appeal No. : M.F.A. No. 327 of 2003 and W.P.(C) No. 11075 of 2005

Appellant : Sasi

Respondent : Saidali

Advocate for Def. : C. Raghavan,; Joe Kalliath, Advs. and ; S. Dhileep,

Advocate for Pet/Ap. : H. Badaruddin,; Uma,; M.K. Dileepan and ;

Disposition : Petition allowed

Judgement :

K.A. Abdul Gafoor, J.

1. The owner and driver of a tractor fitted with a trailer, which met with the accident, have come up with this appeal assailing that portion of the impugned award of the Motor Accidents Tribunal, which directs the payment of compensation to the dependents of the deceased, less Rs. 50,000/-, for which the insurer was

made liable.

2. The Writ Petition is filed by the wife of the first appellant, when revenue recovery proceedings was initiated, to recover the award amount, as the amount deposited as per the interim order in the appeal fell short of the interim direction.

3. It is contended by the appellant that the insurance policy - Ext.B1, reveals that the 'tractor with trailer No. GT/192/95 has been insured in terms of the Motor Vehicles Act to cover the liability in terms of the Act'. The accident occurred after 14.11.1994. Therefore, the deceased, who was travelling in the trailer which did carry bricks, as is revealed by Ext.A1 F.I.R., was covered by the policy, as he was travelling as a representative of the goods. So, the tribunal ought not to have limited the liability of the insurer to the extent of Rs. 50,000/- and directed payment of the balance amount of Rs. 1,40,150/- to be paid by the appellant.

4. It is contended by the insurer that the tractor is neither a transport vehicle, nor a goods vehicle. Therefore, it cannot carry goods or passengers. When it cannot carry goods, there arises no question of the owner or the representative of the goods being carried in the tractor. So, the tribunal was well justified in limiting the liability of the insurer to the extent of Rs. 50,000/-. In this regard, the decisions reported in National Insurance Co. Ltd. v. Kottan, 2003 (2) KLT 29, and National Insurance Co. Ltd. v. Chinnamma, 2004 (3) KLT 397 (SC) are relied on.

5. It is submitted that the tractor is separately defined in Section 2(44). There is a separate definition for trailer as contained in Section 2(46). Both these do not come within the definition of the 'goods carriage' defined in Section 2(14). So the tractor attached with trailer is not meant for carrying goods. If at all it can carry goods, that can only be used to carry agricultural goods of the owner of the tractor, as the tractor is meant for agricultural purpose.

6. Of course, going by the definition of tractor in Section 2(44), the tractor itself is not a goods vehicle. It may also become a goods vehicle. A trailer can also be fitted with a tractor. Necessarily, in a trailer one can carry goods. Going by Ext.A1 F.I.R., the trailer was carrying laterite stones and the deceased was also present in the trailer at the time of accident. Ext.B 1 policy also discloses that not only the

tractor, but the tractor with trailer No. GT/192/95 has been insured. In order to insure the trailer also, there must have been some use for the trailer and a trailer can be put to use only to carry goods. In such circumstances, a tractor with trailer will satisfy the definition of the goods vehicle, as it is meant to carry goods, when it is fitted with a trailer carrying goods as in this case. The accident being one occurred subsequent to the amendment to the Motor Vehicles Act enforced with effect from 14.11.1994, necessarily such persons carried in the goods vehicle are also covered by the policy which specifically covers the trailer as well. In the original policy, under the clause 'Limitations as to the use of the vehicle', the insurer had not deleted the portion 'goods carriage' under Clause (A) beneath limitations as to use. That also is another reason to presume that the tractor with trailer, which is specifically insured, is also a goods vehicle and the contract was with the understanding that it can also be a 'goods vehicle'.

7. Of course, as rightly pointed out by the counsel for the insurer, in Kottan's case (cited supra), what was involved was a tractor. But there was no evidence that it was fitted with a trailer. Therefore, tractor by itself was not a goods vehicle as rightly held therein. Moreover, at the time of accident that tractor did not even carry any goods. Therefore, the fact situation in that decision does not tally with the same in the case on hand to attract the dictum laid down therein. The Supreme Court in the decision in Chinnamma's case (cited supra) has held that the tractor was meant to be used for agricultural purposes and the tractor and trailer, therefore, as it was carrying vegetables owned by a businessman, were not being used for agricultural purposes. It was in the above circumstances, the coverage of the insurance was declined in that case relying on New India Assurance Co. Ltd. v. Asha Rani and Ors., 2003 (1) KLT 165, especially when the accident was before 14.11.1994.

8. Thus, the decision in that case is with reference to the facts proved that the tractor-cum-trailer was carrying goods belonging to a businessman and it was unfortunate that the accident was prior to the enforcement of the amendment with effect from 14.11.1994. Therefore, on the basis of the facts available in this case that the laterite stones were being carried in the trailer, and it was also specifically insured in the policy, it can be taken as a 'good vehicle' as the tractor was fitted

with a device to carry goods. Necessarily, the person carried in that goods vehicle will be covered and the owner of the vehicle cannot be directed to pay compensation as done in the impugned award.

9. Added to this, is the fact that the insurer had admitted the liability to the extent of Rs. 50,000/-. Had it been a tractor, which is not a goods vehicle, there was no necessity to own that much liability by the insurer and there is no challenge against that part of the award. This is also indicative that the contract of insurance was entered into as if it was a goods vehicle, as the tractor fitted with trailer was a goods vehicle.

10. Consequently, the appeal is allowed making it clear that the insurer will be liable to pay the entire amount quantified in the award. The insurer has to meet the liability and deposit the amount within three weeks from the date of receipt of a copy of this judgment. The first appellant in the M.F.A. is entitled to get back the amount in deposit.

On its basis, the Writ Petition is allowed quashing the revenue recovery proceedings.