

Babu Mathew Vs. Biju Mathew and ors.

Babu Mathew Vs. Biju Mathew and ors.

SooperKanoon Citation : sooperkanoon.com/729462

Court : Kerala

Decided On : Aug-11-2008

Reported in : 2009ACJ1261

Judge : M.N. Krishnan, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 95

Appeal No. : M.A.C.A. No. 1373 of 2007

Appellant : Babu Mathew

Respondent : Biju Mathew and ors.

Advocate for Def. : Joe Kalliath, Adv.

Advocate for Pet/Ap. : M.R. Nandakumar, Adv.

Disposition : Appeal allowed

Judgement :

M.N. Krishnan, J.

1. This appeal is preferred against the judgment of the Motor Accidents Claims Tribunal, Ernakulam in O.P. (MV) No. 1126 of 2000. The claimant has challenged the finding of the Tribunal, whereby the Tribunal has exonerated the insurance company from indemnifying the owner. The Tribunal held that 'thus

notwithstanding the nomenclature, Exh. B1 does not suggest that any amount has been collected by the respondent No. 3 to cover the risks of persons other than third parties or own damage of the vehicle. In the circumstances, the respondent No. 3 has No. liability to indemnify the insured, respondent No. 2'.

2. The learned Counsel for the appellant had made available before me the copy of the policy with the terms and conditions. Admittedly it is a B policy which means that it is a comprehensive policy. Section II--Liability to third parties. Under Section II (1) of the conditions attached to the policy it is stated that 'subject to the limits of liability as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of motor cycle against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person including person conveyed in or on the motor cycle provided such person is not carried for hire or reward'. Learned Counsel would contend that by the terms and conditions of the policy referred to above, the person travelling as a pillion rider is also covered by virtue of this clause. Recently a Division Bench of this Court had considered this aspect in *New India Assurance Co. Ltd. v. Hydrose* : 2008(3)KLT778 . There also it was a B policy and Section II(1)(i) of the conditions attached to the policy revealed that as per the terms and conditions of the policy, the persons travelling in the vehicle are covered. The very same condition was considered and the Division Bench of this Court held that 'the above clearly states that the insurer has undertaken liability in respect of death or bodily injuries to any person including a person conveyed in or on the motor cycle provided such person is not carried for hire or reward. Here, No. limitation of liability is mentioned in the Schedule. In fact specific coverage is provided for the risk of gratuitous passenger as per the conditions of policy regarding the coverage of risk due to death or bodily injury to any person, provided the person is not carried for hire or reward'. So the very same clause which is relied on by the appellant has been interpreted and found that it covers a pillion rider travelling in a motor bike.

3. There is No. embargo for entering into such a contract is also very clear from the decision of the Apex Court in *Amrit Lal Sood v. Kaushalya Devi Thapar* : [1998]2SCR284 . The purport of this decision was considered by the Apex Court in

a larger Bench decision in *New India Assurance Co. Ltd. v. CM. Jaya* : [2002]1SCR298 . The Supreme Court held as follows:

(7) On a careful reading and analysis of the decision in *Amrit Lal Sood*, : [1998]2SCR284 , it is clear that the view taken by the court is not different. In this decision also, the case of *Jugal Kishore* 1988 ACJ 270 (SC), is referred to. It is held (i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy; (ii) there is No. prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and (iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer. Hence, the court after noticing the relevant clauses in the policy, on facts found that under Section II(1)(a) of the policy, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to 'any person'. The expression 'any person' would undoubtedly include an occupant of the car who is gratuitously travelling in it. Further, referring to the case of *Pushpabai Purshottam Udeshi* 1977 ACJ 343 (SC), it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted legal liability of the insurer to the statutory requirement under Section 95 of the Act. As such, that decision had No. bearing on *Amrit Lal Sood's* case (supra) as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that the specific clauses in the policy being wider, covering higher risk, made all the difference in *Amrit Lal Sood's* case (supra) as to unlimited or higher liability. The court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying down that even though the liability of the insurance company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it...

It was made very clear that if there is a condition in the policy then necessarily the insurance company has to pay the liability.

4. Recently a Division Bench of Madhya Pradesh High Court has considered this question in the decision in National Insurance Co. Ltd. v. Brijlata . There also after reviewing the case-law and also the conditions of the policy, the Division Bench held that there is No. provision in the tariff for payment of extra premium for passenger in a private car which also shows that the passengers in a private car are covered without paying any additional premium. It has to be stated that in Tilak Singh's case : AIR 2006 SC1576 , the Apex Court was only considering the question of liability basing upon an Act only policy. The Apex Court held that in an Act only policy, there is No. wider coverage and so the statute does not permit the court to grant relief against the insurance company. So far as this case is concerned, being a comprehensive policy which contains a specific clause so as to cover a person travelling in a motor bike then it is the contractual liability that has to be looked into.

5. Therefore the finding of the court below that the insurance company is not liable to indemnify the owner is to be set aside and it has to be held that the amount has to be paid by the insurance company. The quantum fixed is not interfered with and, therefore, the appeal is allowed and the insurance company, viz., the respondent No. 3 in the claim petition is directed to deposit the amount ordered to be paid by respondent Nos. 1 and 2 within 60 days from the date of receipt of a copy of this judgment.