Dr. T. V. Jose.. Appellant vs Chacko P. M. Alias Thankachan & Ors... ... on 27 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3939, 2001 AIR SCW 3910, 2001 (9) SRJ 508, 2001 (8) SCC 748, 2002 SCC(CRI) 94, 2002 (1) UJ (SC) 72, 2001 (6) SCALE 506, 2002 (1) ALL CJ 770, ILR(KER) 2001 (3) SC 525, (2001) 8 JT 179 (SC), 2002 UJ(SC) 1 72, (2001) ILR (KANT) (2) 5319, (2001) 2 ANDHWR 597, (2001) 3 GUJ LH 500, (2001) 3 KER LT 633, (2002) 4 MAD LW 14, (2002) 2 PUN LR 159, (2002) 1 RAJ LW 48, (2001) 4 SCJ 20, (2002) 1 TAC 1, (2001) 7 SUPREME 257, (2002) 1 RECCIVR 120, (2001) 6 SCALE 506, (2002) WLC(SC)CVL 14, (2001) 2 ACC 626, (2001) 3 ACJ 2059, (2001) 4 CIVLJ 2215, (2001) 107 COMCAS 406, (2001) 4 CURCC 135

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Bench: N. Santosh Hegde, S.N. Variava

CASE NO.:
Appeal (civil) 2215-2216 of 1993

PETITIONER:
DR. T. V. JOSE.. APPELLANT

Vs.

RESPONDENT:
CHACKO P. M. ALIAS THANKACHAN & ORS... RESPONDENTS

DATE OF JUDGMENT: 27/09/2001

BENCH:
N. Santosh Hegde & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

These Appeals are against a Judgment dated 30th January, 1991. Briefly stated the facts are as follows:

Car bearing No. KLO 4828, driven by the 1st Respondent (herein), met with an accident on 9th April, 1987. One of the passengers viz. one Anthony Alexander was seriously injured in that accident. The said Anthony Alexander thereafter succumbed to his injuries on 10th April, 1987. Respondents 1 to 6 are the legal representatives of the said Anthony Alexander. They filed a claim before the Motor Accidents Claims Tribunal (hereinafter referred to as the MACT) against the Appellant, the 1st Respondent and the 8th Respondent (Insurance Company).

Before MACT the Appellant claimed that he had sold the car, on 7th May, 1986, to one Smt. M. K. Bhavani. It was claimed that Smt. Bhavani had thereafter sold the car, on 12th May, 1986, to Sh. Aboobacker. It was claimed that on 15th August, 1986 Sh. Aboobacker had sold the car to one George Mathew. The said George Mathew had supposedly thereafter sold the car to one Roy Thomas on 18th August, 1986. The Appellant claimed that on the date of the accident the car belonged to Roy Thomas. However it was an admitted position that the transfer of ownership of the car was never intimated to the R.T.O. and that in the records of R.T.O. the name of the Appellant continued to be shown as the owner.

An Insurance Policy bearing No. 100505/22/1/0067/86 had been issued by the 8th Respondent. It was valid from 25th November, 1986 to 24th November, 1987. This Policy had been issued in the name of the Appellant. Before MACT the Appellant claimed that he had not taken out the Insurance Policy.

The 1st Respondent claimed, before the MACT, that the real owner was the Appellant. The 1st Respondent claimed that he was employed by the Appellant. The 8th Respondent claimed that the Policy was only an Act Policy (Third Party Policy) and, therefore, it did not cover liability towards passengers.

Before MACT the Appellant examined himself. He also examined Smt. M. K. Bhavani, her son, Sh. Aboobacker and George Mathew to show that the car had been sold by him. The 1st Respondent gave evidence to the effect that the Appellant was still the owner of the car.

After considering the evidence MACT gave an Award dated 5th May, 1988. It held that the Appellant was not the owner of the car and was, therefore, not liable. It held that the Insurance Company was also not liable as the Policy had been got issued in the name of the Appellant when he was not the real owner. It held that the driver was rash and negligent and responsible for the accident. MACT passed an Award in a sum of Rs. 1,40,700/- with interest at 12 per cent per annum. MACT held that the driver was bound to pay the sum to the claimants.

The 1st Respondent and Respondents 1 to 6 filed Appeals before the High Court. The High Court disposed of both the Appeals by the impugned Judgment dated 30th January, 1991. The High Court held that all the documents disclosed the Appellant to

be the owner of the car. The High Court held that the Appellant was thus the owner of the car. The High Court held that as such owner the Appellant was liable to pay compensation to the claimants. The High Court confirmed the finding that the driver had been rash and negligent and was the cause of the accident. The High Court held that the Policy was an Act only (Third Party Policy) and, therefore, the Insurance Company was not liable. The High Court, however, reduced the compensation to a sum of Rs. 1,32,000/- with interest at 12 per cent per annum from 7th July, 1987. Hence these Civil Appeals.

Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. Mr. Iyer submitted that merely because the name had not been changed in the records of the R.T.O. did not mean that the ownership of the vehicle had not been transferred. Mr. Iyer submitted that the real owner of the car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party Respondent No.9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas.

We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so. Mr. Iyer then submitted that the Policy was in the name of the Appellant. He admitted that this was a third party Policy. He submitted that even in a third party policy the Insurance Company would be liable for a claim by a passenger in the car. He submitted that in any case the terms of this policy made the Insurance Company liable even for a claim by a gratuitous passenger. He produced certain terms and conditions and claimed that these governed this policy. He then relied upon Section II (1)(a) wherein it is provided as follows:

" SECTION II - LIABILITY TO THIRD PARTIES.

(1) The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimants costs and expenses which the Insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirements of Section 95 of the motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the Insured.

xxx xxx xxx"

Mr. Iyer then showed to Court the Policy which is on record. From it he showed that I.M.T. Endorsement No. 2(a) had been excluded. He submitted that I.M.T. Endorsement 2(a) only excluded Sections I and III of the Policy. He submitted that this clearly showed that Section II continued to apply. He submitted that Clause 1(a) of Section II clearly showed that the Insurance Company was liable for death or bodily injury to any person including the occupant. He submitted that, therefore, the 8th Respondent was liable to reimburse the Appellant.

Mr. Iyer further submitted that under Sections 94 and 95 of the Motor Vehicles Act, 1939 it was compulsory that all cars be insured. He submitted that the minimum insurance which was required under Section 95 (1)(b) was as follows:

"95. xxx xxx xxx

(a) xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) 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 public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act,

1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability."

He submitted that even a third party policy covers liability for bodily injury to any person or damage to the property of a third party. He submitted that the term "any person" and the term "third party" would also include gratuitous passengers in the car.

Mr. Iyer relied upon the authority in the case of Amrit Lal Sood v. Kaushalya Devi Thapar reported in (1998) 3 SCC 744, whereunder it has been held that the term "any person" would include an occupant of the car who was gratuitously travelling in the car. However, at this stage, it must be noted that this Court has in Para 4 of this Judgment held as follows:

"The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicle Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer."

The finding that the term "any person" would include an occupant who is gratuitously travelling in the car is clearly in respect of a comprehensive policy and not in respect of a third party policy.

Mr. Iyer also relied upon the authority in the case of National Insurance Co. Ltd. v. V. S. R. Kumaresan reported in AIR 1991 Madras 3. In that case the Policy had a term which said "used only under a stage carriage permit" and the accident occurred when the vehicle was being test driven on a private road. The Court held that the Insurance Company was still liable. The Court further held that the expression "third party" in Section 95 (1)(b) does not mean one outside the vehicle. On the other hand, Mr. Vishnu Mehra appearing for the 8th Respondent submitted that the policy was a third party policy. He pointed out that the premium paid was only Rs. 120/-. He pointed out that in the Policy, which was on record, there was a Clause which read as follows:

> "Add: Personal Accident Benefit as per IMT 5, Death benefit Rs. "

He pointed out that I.M.T. 5 was for accident to passengers other than the insured, his paid driver or cleaner. He submitted that the premium required to be paid to cover passengers or occupants of the car had not been paid. He submitted that this policy did not cover liability to such persons. He pointed out that the terms and conditions of the policy relied upon by Mr. Iyer were not on record. He pointed out that what was being shown to the Court were some terms and conditions of a comprehensive policy for private cars. He submitted that those terms did not apply to a third party policy and would not help the claimants.

Mr. Vishnu Mehra relied upon the Judgment in the case of P.P. Udeshi v. Ranjit Ginning and Pressing Co. reported in (1977) 2 SCC 745. In that case the question was the identical, i.e. whether a Third Party Policy would cover risk to a passenger. This Court has held as follows:

> "19. As Section 95 of the Motor Vehicles Act, 1935 as amended by Act 56 of 1969 is based on the English Act it is useful to refer to that. Neither the Road Traffic Act, 1960, or the earlier 1930 Act required users of motor vehicles to be insured in respect of liability for death or bodily injury to passengers in the vehicle being used except a vehicle in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. In fact, sub-section 203(4) of the 1960 Act provided that the policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon, or entering or getting on to or alighting from, the vehicle at the time of the occurrence of the event out of which the claims arise. The provisions of the English Act being explicit the risk to passengers is not covered by the insurance policy. The provisions under the English Road Traffic Act, 1960, were introduced by the amendment of Section 95 of the Indian Motor Vehicles Act. The law as regards general exclusion of passengers is stated in Halsbury's Laws of England, Third Edition, Vol. 22, at p. 368, para 755 as follows:
>
> Subject to certain exceptions a policy is not required to cover liability in respect of the death of, or bodily injury to, a person being carried in or upon, or entering or getting into or alighting from, the vehicle at the time of the occurrence of the event out of

which the claim arises.

It is necessary to refer to the subsequent development of the English law and as the subsequent changes have not been adopted in the Indian statute, suffice it to say that the Motor Vehicle (Passenger Insurance) Act, 1971, made insurance cover for passenger liability compulsory by repealing paragraph (a) and the proviso of sub-section 203(4). But this Act was repealed by Road Traffic Act, 1972 though under Section 145 of 1972 Act the coming into force of the provisions of Act 1971 covering passenger liability was delayed under December 1, 1972. (vide Bingham's Motor Claims Cases, 7th Ed., p. 704.)

20. Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to sub-section which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

21. The insurer can always take policies covering risks which are not covered by the requirements of Section 95. In this case the insurer had insured with the insurance company the risk to the passengers. By an endorsement to the policy the insurance company had insured the liability regarding the accidents to passengers in the following terms:

In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger ..

> The scale of compensation is fixed at Rs. 15,000. The insurance company is ready and willing to pay compensation to the extent of Rs. 15,000 according to this endorsement but the learned Counsel for the insured submitted that the liability of the insurance company is unlimited with regard to risk to the passengers. The counsel relied on Section II of the Policy which relates to liability to third parties. The clause relied on is extracted in full:
>
> Section II - Liability to Third Parties
>
> 1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of
>
> (a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such persons by the insured.

It was submitted that the wording of clause 1 is wide enough to cover all risks including injuries to passengers. The clause provides that the Company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable. This according to the learned Counsel would include legal liability to pay for risk to passengers. The legal liability is restricted to clause 1(a) which states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clause 1 and 1(a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939." would indicate that the liability is restricted to the liability arising out of the statutory requirements under Section 95. The second part of clause 1(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are not covered under Section 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under clause 1 and 1(a) is the risk required to be covered under Section 95 of the Motor Vehicles Act."

Mr. Vishnu Mehra further pointed out that in Amrit Lal Sood's case (supra) also it has been held that Section 95 of the Motor Vehicles Act does not require a policy to cover the risk to passengers who are not carried for hire or reward. He submitted that in that case the Policy was a comprehensive policy and because of that it was held that the risk to passengers was covered.

Mr. Vishnu Mehra also relied upon the case of National Insurance Co. Ltd. v. Jugal Kishore reported in (1988) 1 SCC 626, wherein it has been held that as the liability under the policy was in excess of the statutory liability the award against the insurance company could only be in accordance with the

statutory liability.

In this case only the first sheet of the policy is on record. This clearly shows that the policy is a third party policy. The terms and conditions governing this Policy are not on record. What was shown to Court was terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy. In the absence of terms and conditions governing this policy it is not possible to accept the submission of Mr. Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The 8th Respondent Company will, therefore, not be liable to reimburse the Appellant.

Faced with this situation, Mr. Iyer relied upon Jugal Kishore's case (supra) and submitted that it was the duty of the Insurance Company to have produced the terms and conditions of the original Policy. He submits that they should even now be called upon to produce the terms and conditions governing this policy. We are unable to accept this submission. It has not been the Appellant's case, either before MACT or before the High Court, that the policy contained any term which covered liability to passengers. Before MACT the case was that the Appellant was not the owner and was, therefore, not liable. Before the High Court the case that because of the Circular issued by the Tariff Advisory Committee the Insurance Company was liable. The High Court held that that Circular only dealt with comprehensive policy. That Circular has not been produced before us. Therefore the finding of the High Court that that Circular only covered comprehensive policies cannot be challenged. Now a new case cannot be allowed to be made out. Section II(1)(a) relied upon is a term which is incorporated pursuant to that Circular. If the Circular only applies to comprehensive policies then this term also applies to comprehensive policies only. In our view it is now too late in the day to call upon the 8th Respondent to produce the original terms and conditions.

Under the circumstances, we see no substance in these Appeals. The same stand dismissed. There will be no Order as to costs.

...J. (N. SANTOSH HEGDE) ..J. (S. N. VARIAVA) September 27, 2001.