Kamala Mangalal Vayani & Ors vs M/S. United India Insurance Co. ... on 14 January, 2010

Equivalent citations: 2010 AIR SCW 6604, 2010 (12) SCC 488, 2011 AAC 340 (SC), 2011 (2) AIR JHAR R 596, (2010) 3 RAJ LW 2357, (2010) 3 SCALE 99, (2010) 3 ACJ 1441, (2010) 46 OCR 98, (2010) 2 PUN LR 687, (2010) 2 ACC 441, (2011) 2 TAC 390, (2011) 3 ANDHLD 67, (2010) 3 RECCIVR 846, 2011 (1) SCC (CRI) 574, (2011) 1 ACC 404

Bench: Surinder Singh Nijjar, R V Raveendran

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8221-8225 OF 2002

Kamala Mangalal Vayani & Ors. ... Appellants

Vs.

M/s United India Insurance Co. Ltd. & Ors ...Respondents

O R D E R

The claimants in five motor accident claim cases are the appellants in these appeals by special leave. The owner-cum-driver (third respondent) did not contest the proceedings before the Tribunal. Only the insurer (first respondent) contested the proceedings. The Motor Accidents Claims Tribunal allowed the claim petitions by a common judgment dated 16.5.1996. The first case relates to death of one Mangalal and the Tribunal awarded Rs.21,61,965/- as compensation. The other four cases relate to injuries sustained by the respective claimants in the same accident and the Tribunal awarded Rs.84,000/-, Rs.80,000/-, Rs.84,000/- and Rs.1,01,000/- respectively, as compensation. The Tribunal held that the owner and insurer were jointly and severally liable and the amount was recoverable from the insurer.

2. The insurer (first respondent) filed appeals before the Madras High Court contending that the insured vehicle had been engaged by a group consisting of claimants and others for a pilgrimage tour in the States of Karnataka and Tamil Nadu; that the vehicle did not have a permit to operate as a public service vehicle; that the insurance policy covered the use of the vehicle only under a `permit' within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under sub-section

(3) of section 66 of the said Act; and that as the permit was not produced, the insurer could not be made liable. The High Court, by its common judgment dated 5.10.2001 accepted the said contentions and set aside the judgement and awards of the Tribunal insofar as it made the insurer liable. The said judgment is challenged by the claimants.

3. The fact that the vehicle involved in the accident was insured with the first respondent under a comprehensive Commercial Vehicle Insurance Policy on the date of the accident (27.7.1990) is not disputed. The insurance cover under the said policy was available from 31.3.1990 to 30.3.1991. The schedule to the insurance policy shows that the owner of the vehicle had paid in addition to the basic premium, additional premium to cover liability in respect of ten passengers as also the driver. The insurer however contends that as it had denied that the vehicle had a valid permit, the claimants ought to have proved that the vehicle had a valid permit on the date of the accident; and as they failed to do so, it was not liable.

4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence.

5. We therefore allow the appeals, set aside the order of the High Court and restore the judgment and awards of the Tribunal. The appellant-claimants will be entitled to interest on the compensation amount from the date of application for compensation to date of payment at the rate 5% per annum.

6. We make it clear that this judgment will not come in the way of the insurer proceeding against the owner and recovering the amount paid by it to the claimants, in the event of the insurer being able to establish, in any suit it may choose to file against the owner, that there was violation or breach of the conditions of the insurance policy or that the vehicle was not covered by a permit on the date of the accident.

_____J.

(R V Raveendran)

New Delhi; _____J.

January 14, 2010. (Surinder Singh Nijjar)