Oriental Insurance Co. Ltd vs Cheruvakkara Nafeessu & Ors on 14 December, 2000

Bench: K.T.Thomas, R.P.Sethi

CASE NO.:
Appeal (civil) 7359 2000

PETITIONER:
ORIENTAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
CHERUVAKKARA NAFEESSU & ORS.

DATE OF JUDGMENT: 14/12/2000

BENCH:
K.T.Thomas, R.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J SETHI,J.

Leave granted. What is the extent of liability of an insurance company towards the third party as per Section 95(1)(b) of the Motor Vehicles Act, 1939 (hereinafter called "the Act") and what are its rights in case of payment of an amount in excess of the limits of the liability under the insurance policy vis-à-vis the insured?, are the questions to be determined in this appeal. It has been argued on behalf of the insurance company that under the terms of the insurance policy in the instant case, the company was not liable to pay more than Rs.50,000/-, being the limit of its liability. The excess amount of the award was to be paid by the insured for which the Tribunal was not competent to issue directions against the appellant-company. On the other hand counsel for the insured has submitted that as per avoidance clause in the insurance company, the appellant-company was liable to indemnify the whole extent of liability towards the claim notwithstanding the limit of liability of the insurance. In this case the claim petition was filed by the legal heirs of C. Abdul Shukkoor, who died in a road accident on 6.7.1988. The accident was caused by an auto-rickshaw bearing Registration NO.KRN 1859 which was insured with the appellant-company. The respondents claimed Rs.2 lakhs as compensation. The appellant-company filed their reply specifically stating therein that their liability was limited to Rs.50,000/- under the policy of insurance. The Claims Tribunal passed an award of Rs.1,94,150/- and fastened the entire liability on the appellant-company. The appeal filed against the order of the Claims Tribunal was dismissed vide the judgment impugned in this appeal. Admittedly, the insurance policy in this case is of a date prior to

the coming into force of the new Motor Vehicles Act on 1.7.1989. The liability of the insurance company to satisfy judgments against persons insured in respect of the third party risk is covered under Section 96 of the Act, sub-section (1) of which provides:

> "96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks _ (1) If, after a certificate of insurance has been issued under sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

Under the insurance policy the limit of company's liability in respect of any one claim or series of claims arising out of one event is Rs.50,000/- only. However, the avoidance clause of the policy provides: "Nothing in this policy or the endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96.

BUT the insured shall repay to the company all sums paid by the company which the company would not have been liable to pay but for the said provisions."

Section II of the policy deals with "liability of third party" and provides that the company will indemnify the insured against all sums including claimants costs and expenses which insured become legally liable to pay in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or damage to the property caused by such use. A conjoint reading of all the terms of the policy of insurance executed in this case indicate that the total extent of liability of the insurance policy is Rs.50,000/- but the company is liable to indemnify the insured against all sums including claimant's costs and expenses which insured becomes liable to pay and nothing in the policy affects the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of Section 96 of the Act. However, the insured is liable to repay to the company all sums paid by the company which the company would not have been liable to pay but for the condition of liability relating to third party. Dealing with such a situation this Court in New Asiatic Insurance Co. Ltd.v. Pessumal Dhanamal Aswani & Ors. [AIR 1964 SC 1736] held: "The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its realising damages for the injuries suffered, but vis-a-vis the insured, the company does not undertake that liability or undertake it to a limited extent. It is in view of such

a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to the third parties. This is mentioned prominently in the policy itself and is mentioned under the heading 'avoidance of certain terms and rights of recovery', as well as in the form of "An Important Notice", in the Schedule to the policy. The avoidance clause says that nothing in the policy or any endorsement thereon shall affect the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Act. It also provides that the insured will repay to the company all sums paid by it which the company would not have been liable to pay but for the said provisions of the Act. The 'Important Notice' mentions that any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Act is recoverable from the insured, and refers to the avoidance clause.

Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-à-vis the third parties, in view of the provisions of the Act. We are of the opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of Section II is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties' claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended."

Relying upon the aforesaid judgment and referring to the avoidance clause, a three-Judge Bench of this Court in Amrit Lal Sood and another v. Smt.Kaushalaya Devi Thapar & Ors. [AIR 1998 SC 1433] held: "In the policy in the present case also, there is a clause under the heading:

> "AVOIDANCE OF CERTAIN TERMS AND RIGHTS OF RECOVERY - which reads thus: Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96. But the Insured shall pay to the company all sums paid by the company which the company would not have been liable to pay but for the said provisions."

The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment from the insured is left open. The circumstances that the owner of the vehicle did not file an appeal against the judgment of single Judge of the High Court under the Letters Patent may also be relevant in the event of a claim by the insurance company against the insured for repayment of the amount. We are not concerned with that question here."

The reliance of the learned counsel for the appellant on T.Shantharam v. State of Karnataka & Ors.[1995 (2) SCC 539 and National Insurance Co. Ltd., New Delhi v. Jugal Kishore & Ors. [1988 (1) SCC 626] is of no help to him inasmuch as in those cases the effect of judgment in Amrit Lal Sood's case has not been considered. In T.Shantharam's case the court was dealing with the effect of a comprehensive policy vis-a-vis the liability of the insurer in respect of third party risk on the basis of the estimated value of the vehicle and found that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability only on account of entering into a comprehensive policy. It was pointed out that the comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle which did not mean the limit of liability with regard to third party risk becoming unlimited or higher than the statutory liability. In the case of National Insurance Co. Ltd. v. Jugal Kishore & Ors. (supra) this Court observed that the liability under the policy could not exceed the statutory liability under Section 95 of the Act only on the ground that the insured had undertaken Comprehensive insurance of the vehicle. The payment of higher premium on that score, however, did not mean that the limit of liability with regard to third party risk became unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. In the facts and circumstances of this case we find that despite holding the liability under the policy limited to the extent of Rs.50,000/-, the Claims Tribunal and the High Court were not unjustified in directing the appellant-company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant- company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal. The appeal is accordingly allowed holding that the appellant- company is liable to pay the entire award amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs.