

Oriental Insurance Co. Ltd vs Sony Cheriyan on 19 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3252, 1999 (6) SCC 451, 1999 AIR SCW 3226, (1999) 2 CPR 18, (1999) 5 SCALE 114.2, (1999) 3 PUN LR 495, 1999 (4) COM LJ 39 SC, 1999 (4) LRI 703, 1999 (7) ADSC 470, 1999 (6) KANT LD 707, 1999 (5) SCALE 114, 1999 (8) SRJ 428, 1999 (123) PUN LR 495, 1999 (2) UJ (SC) 1424, (1999) 6 JT 149 (SC), (2001) 1 ANDHWR 1, (2000) 2 MADLW(CRI) 918, (2002) 1 BANKCAS 123, (2001) 2 ICC 435, (1999) 4 CURCC 7, (2000) 1 MAD LJ 8, (1999) 3 MAD LW 672, (2000) 1 TAC 92, (2000) 1 ANDHLD 17, (1999) 7 SUPREME 195, (1999) 4 RECCIVR 111, (1999) 4 ICC 251, (1999) 2 ACC 196, (2000) 1 CIVLJ 715, (2000) 99 COMCAS 497, (1999) 4 ALL WC 3337, (2001) 2 CIVILCOURTC 288, (2001) 2 RECCRIR 426, (1999) SC CR R 780, (2001) 1 ANDHLT(CRI) 119, (1999) 2 CPJ 13

Author: S. Saghir Ahmad

Bench: S.Saghir Ahmad, R.P.Sethi

PETITIONER:
ORIENTAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
SONY CHERIYAN

DATE OF JUDGMENT: 19/08/1999

BENCH:
S.Saghir Ahmad, R.P.Sethi

JUDGMENT:

S. SAGHIR AHMAD, J.

Respondent's truck was insured with the appellant. On 19.4.1994, while the truck was on its way from Bombay to Allapuzha carrying 15 barrels of Ether Solvent, it caught fire at Bisalkoppa near Hubli, which gave rise to a Claim Petition being filed by the respondent before the District Consumer Disputes Redressal Forum, Allapuzha, in the sum of Rs.2,75,000/-, along with interest @ 18 per cent per annum from 19.4.1994, but the Complaint was dismissed on 30.9.1995. An appeal, which was thereafter filed by the respondent before the Kerala State Consumer Disputes Redressal

Commission, was allowed on 24.4.1996 directing the appellant to pay a sum of Rs.1,93,500/- together with interest @ 12 per cent from 19.4.1994 to the respondent. A Revision filed by the appellant before the National Consumer Disputes Redressal Commission was dismissed on 10.2.1997 and now the matter is in appeal before this Court.

The claim of the respondent was resisted by the appellant before the District Consumer Disputes Redressal Forum on the ground, inter alia, that the claim was not covered by the terms of the insurance policy as the respondent, in his vehicle, was carrying Ethyl Ether, a hazardous and highly inflammable substance, which could not be legally carried by the respondent in his truck in terms of the permit granted to him under the Motor Vehicles Act, 1988. It was precisely on this ground that the District Forum had rejected the claim which, as mentioned above, was allowed by the State Commission. The National Commission before which it was argued that the Ether Solvent and Ethyl Ether were the same substance, dismissed the Revision on the ground that what was prohibited under the Central Motor Vehicle Rules was Ethyl Ether and that there was no material on record to indicate that Ethyl Ether was the same substance as Ether Solvent.

The insurance policy issued to the respondent in respect of his Mahindra Alwin Nisan Truck No. KL-04 A 4683, which was registered as a public carrier, clearly stipulated under the heading "LIMITATION AS TO USE" as under :

"Only for carriage of goods within the meaning of the Motor Vehicles Act, 1988."

Section 2 (13) of the Motor Vehicles Act, 1988 (the 'Act' for short) defines "goods" as under :

" 'Goods' includes live-stock, and anything, (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle."

Section 2 (14) defines "goods carriage" as under :

" 'Goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."

"Permit" is defined in Section 2(31) as under:

" 'Permit' means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle."

This definition stipulates that a motor vehicle cannot be used as a transport vehicle unless a permit is issued either by the State Transport Authority or the Regional Transport Authority or any other Authority prescribed in that behalf under the Act.

Chapter 5 of the Act deals with control of transport vehicles. Section 66 (1), together with the third proviso which is relevant for this case, lays down as under :

"66. Necessity for permit -- (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that.....

Provided further that.....

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

Section 77 contemplates that an application for a 'permit' to use a motor vehicle for the carriage of goods shall contain, amongst other particular, the nature of goods it is proposed to carry.

Section 78 provides that a Regional Transport Authority, while considering an application for a 'goods carrier permit', shall have regard to the matters, namely:

"(a) the nature of the goods to be carried with special reference to their dangerous or hazardous nature to human life;

(b) the nature of the chemicals or explosives to be carried with special reference to the safety to human life."

Section 79 provides that a Regional Transport Authority may grant a 'goods carrier permit' and may attach to the 'permit' any one or more of the conditions specified in sub-section (2) thereof. The relevant portion of sub-section (2) is reproduced below:

"(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :

(i) (ii) (iii) that goods of a specified nature shall not be carried. (iv)

(v) (vi)

(vii) (viii).....

(ix)"

The respondent, under the 'permit' granted to him could, admittedly, carry "All kinds of unhazardous goods, including fish, except those prohibited."

Chapter V of Central Motor Vehicles Rules, 1989 deals with construction, equipment and maintenance of motor vehicles. Rule 91(c) defines "dangerous or hazardous goods"

as under :

" `dangerous or hazardous goods' means the goods of dangerous or hazardous nature to human life specified in Tables I, II and III to Rule 137."

Rule 129 deals with transportation of goods of dangerous or hazardous nature to human life.

Table I to Rule 137 contains the labels which have to be displayed on the vehicle in relation to the dangerous or hazardous goods carried by them. Table II describes indicative criteria in respect of flammable chemicals. The following is the criteria:

"(b) Flammable chemicals :

(i) flammable gases: chemicals which in the gaseous state at normal pressure and mixed with air become flammable and the boiling point of which at normal pressure is 20 Degree C or below;

(ii) highly flammable liquids: chemicals which have a flash point lower than 21 Degree C and the boiling point of which at normal pressure is above 20 Degree C;

(iii) flammable liquids: chemicals which have a flash point lower than 55 Degree C and which remain liquids under pressure, where particular processing conditions, such as high pressure and high temperature, may create major accident hazards.

Table III contains the list of hazardous and toxic chemicals. One of the items described in this Table is 'Ethyl Ether' which is classified as flammable in the same Table.

Admittedly, respondent was carrying Ether Solvent which has been described as a hazardous and highly flammable article. Since under the 'permit' granted to the respondent he could transport only non-hazardous articles, and the insurance policy covered only those goods which were permissible under the Motor Vehicles Act to be carried by the respondent, the judgments dated 24.4.1996 and 10.2.1997 passed by the State and National Commissions respectively, are incorrect.

The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to

determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein.

In the instant case, while specifying the "LIMITATIONS AS TO USE", it was clearly mentioned that the policy was meant to cover only carriage of goods as defined within the meaning of Motor Vehicles Act, 1988. The 'permit' granted to the respondent under the Act specifies the nature of goods which he could carry on the vehicle. It was provided in the 'permit' itself that the respondent could carry "all kinds of unhazardous goods including fish except those prohibited." It is obvious that the 'permit' was not granted for carrying hazardous goods. It has already been specified above that Ether which was being transported by the respondent in his vehicle is hazardous substance indicated in Table III under Rule 137. There was, therefore, a specific prohibition operating against the respondent from carrying a hazardous, and that too, flammable substance in his vehicle which, under the 'permit' granted to him, could be utilised only for carrying unhazardous goods under the Motor Vehicles Act.

Mr. T.L. Vishwanatha Iyer, learned Senior Counsel appearing on behalf of the respondent has contended that what was being carried by the respondent was ETHER SOLVENT which is not specified in Table III appended to Rule 137 and what is specified therein is ETHYL ETHER which is a different substance altogether and, therefore, carrying of ETHER SOLVENT was not and it could not be treated to be a hazardous substance as it was not specified as such in Table III.

We are not prepared to accept this contention. Ether is a chemical substance. In Hawley's Condensed Chemical Dictionary, Eleventh Edition, 'Ether' is described as under

:

"ether - A class of organic compounds in which an oxygen atom is interposed between two carbon atoms (organic groups) in the molecular structure giving the generic formula ROR. They may be derived from alcohols by elimination of water, but the major method is catalytic hydration of olefins. Only the lowest member of the series, methyl ether, is gaseous; most are liquid and the highest members are solid (cellulose ethers). The term "ether" is often used synonymously with "ethyl ether" and is the legal label name for it."

In McGraw-Hill Encyclopedia of Chemistry, Second Edition, it is described that "Ethers" are used widely as solvents, both in chemical manufacture and in the research laboratory. It is also mentioned therein that the most important Ether is Ethyl Ether. While describing Ethyl Ether, it is mentioned in this Encyclopedia as under :

"The best known of the ethers is ethyl ether, sometimes, called diethyl ether or simply ether, $\text{CH}_3 \text{CH}_2 \text{OCH}_2 \text{CH}_3$. It is used in industry as a solvent and in medicine as an anesthetic."

In view of the above, it is apparent that Ether Solvent is only a descriptive name for Ether which is widely used as a solvent not only in the industry, but also in chemical manufacture and in research laboratories. Ether and Ethyl Ether are the same substance and the term "Ether" is used synonymously with the "Ethyl Ether".

In view of the above, the appeal is allowed. The judgment and orders dated 24.4.1996 and 10.2.1997 passed by the State and National Commissions respectively are set aside, while the judgment dated 30.9.1995 passed by the District Consumer Disputes Redressal Forum, Alappuzha, is restored by which the Complaint (the Claim Petition of the respondent) was rightly dismissed. There will be no order as to costs.