Kerala High Court

Hon'ble Justice V. R. Krishna Iyer

KESAVAN NAIR v. STATE INSURANCE OFFICER

Citation : 1971 KLT 380 : 1971 KLJ 407

JUDGMENT

1. The second appeal is the consequence of a tragic bus accident in the High ranges of Kerala which resulted in the loss of 7 lives and injuries to many others. we are immediately concerned with the death of a father and son, Kuruvilla Joseph and Joseph Varkey, whose representatives have brought the present action for compensation under the Fatal Accidents Act. Both the lower courts have held that the driver was negligent and that the fatal consequence was directly caused by such negligent driving. A decree for Rs. 2700/- referable to the death of the father and for Rs. 2000 of the son was granted to the plaintiffs. The sums were obviously small. But the poor plaintiffs did not carry the matter in appeal. It is unfortunate that the Trial Court has awarded only such a small amount by way of damages. But I am not concerned to go into this aspect of the matter as the plaintiffs have acquiesced in the decree. The first defendant also did not bother to file an appeal, for the additional reason that he had to pay only Rs. 700 out of his pocket since the second defendant, the State Insurance Department, was directed to pay Rs. 2000 for each life lost. However, the second defendant challenged the decree making it liable and urged before the appellate court that the first defendant alone was liable in view of the provisions of S.96 of the Motor Vehicles Act. The plea of the second defendant was that there was overloading by the first defendant at the time of the accident, and since one of the conditions of the permit issued to the stage carriage in question had thus been violated the insurer was not liable in damages and that the first defendant alone had to pay the sum decreed. Two questions were considered by the courts below, one of fact and the other of law. The learned Subordinate Judge took the view that there was no overloading at the time of the accident, while the learned District Judge disagreed with this finding. I have no

doubt, after having read the discussions of the two courts and also on a reasonable understanding of the evidence adduced in the case, that the Trial Court's decision that there was no overloading is perverse. Apart from the fact that outrageous overloading under the nose of the police has become the order of the day in the Kerala State, the positive evidence adduced in this case leads to no conclusion but that there was no space for a number of passengers to sit because all the seating accommodation had already been filled. The learned Subordinate Judge, expanding upon minor discrepancies and relying upon a first information statement which had not been proved by its author (and was therefore inadmissible in evidence) has reached a strange conclusion. The learned District Judge has set the record right, if I may say so, by holding that the bus was clearly overloaded.

2. Based on this finding the argument was put forward by the insurer that underS.96(2)(b)(i)(c) there was no liability for the State Insurance Department. More particularly, the point made was that there had been a breach of a condition of the Policy in that the vehicle had been used for a purpose not allowed by the permit. The permit issued to the vehicle in question was one for a stage carriage as defined in S.2(29). A stage carriage means "*a motor vehicle carrying or adapted to carry more than 6 persons ..... for hire or reward. .....*" There is no dispute that the bus in question was a stage carriage, and that a permit had been issued as defined under S.2(20) of the Act, for this bus. The only question is whether the bus had been used for a purpose not allowed by the permit under which the vehicle is used. lam afraid, the argument is fallacious and confuses between the purpose for which the vehicle is used and the conditions subject to which such purpose is effectuated. The purpose of the stage carriage was to carry passengers and, in this case, it is obvious that the bus was carrying passengers. If it had been used not for carrying human beings but goods like a truck, there might have been user for an unwarranted purpose. On the other hand if in carrying out the sanctioned purpose, namely transporting passengers, any conditions are violated either by over speeding, or over hooding, for example there may be a violation of the conditions of the permit, but one cannot say that by that breach, the vehicle is used for a purpose different from the one authorised by the permit. It is clear from the ruling reported in British India General Insurance Co., Ltd. v. Captain Itbar Singh and others (AIR 1959 SC 1331) and Mangilal v. Parasam (AIR 1971 MP 5) that the defences available to an insurer are confined to those mentioned in S.96(2) of the Act. The

only defence put forward in the present case having been repelled by me it follows that the insurer is liable to the extent of Rs. 2000/- in the case of each of the deceased. I must express surprise that the Insurance Department of a Welfare State should have sought to evade payment to two innocent victims by urging such a preposterous argument.

3. I permit myself, reluctantly though, two observations arising from the plea of non liability set up by the State Insurance Department of the Kerala Government. Firstly, I strongly express my inability to share the semantic cataract which obfuscates the obvious distinction between the purpose for which a motor vehicle is used and the conditions of care regulating such user. Secondly, I cannot at all hide my pained surprise at the argument of the counsel for the Government which virtually means that if the motorist is not negligent, the insurer is not liable and if the motorist negligently violates the conditions of careful driving written into the permit then also the insurer is not liable. For, this argument, if seriously taken, would reduce the payment of the insurance premium to a donation to the State exchequer since the insurer will be liable neither when the motorist is negligent nor when he is careful and the victim of the accident gets no help as a result of the insurance a reductio ad absurdum. I cannot accede to the strange process of construction whereby S.96 of the Act can be so emasculated as to defeat the policy of the law of compulsory insurance to cover third party risks in accidents, at a time when the risks themselves are escalating rapidly on the Kerala roads.

4. It is not altogether irrelevant to observe that motor vehicle accidents in the State are increasing at an alarming rate but that there is hardly any serious check by the concerned authorities to ensure careful driving. The innocent victim is faced with legal difficulties, to boot in recovering damages. On account of the legal position laid down in Mangilal v. Parasam (AIR 1971 MP. 5) the insurer is liable to pay only if the insured is liable to pay. It often times happens that a prosecution precedes a civil case and since the prosecution is in the control and direction of the police if it ends in an acquittal on account of the indifference in the conduct of the prosecution the insured pleads non-liability and the insurer also sometimes escapes. Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer, instead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the

legislature and not for the court. But this is a lacuna in the law which I think it would be just to rectify.
The appeal is allowed with costs.