SUPREME COURT OF INDIA

Jameskutty Jacob

Vs.

United India Insurance Co.

C.A.No.38 of 1999

(B. P. Singh and Altamas Kabir, JJ.)

21.03.2006

JUDGEMENT

B. P. SINGH, J.:-

1. We have heard the learned counsel for the parties.

2. This appeal was earlier allowed by a judgment and order of this Court dated August 5, 2003, reported in Jameskutty Jacob v. United India Insurance Co. Ltd. and others, (2003) 7 SCC 131. The appeal was allowed on a finding that the vehicle in question was not shown to be a vehicle in which passengers were carried for hire or reward so as to limit the liability of the insurer to Rs. 50,000/- under Section95(2)(b)(i) of the Motor Vehicles Act, 1939 (for short "the Act").

3. The said judgment also recorded the fact that nobody had appeared on behalf of the Insurance Company and the Court was informed by the learned counsel for the appellant that there was no

evidence on record to show that the vehicle in question was a taxi. Thus, the said judgment of this Court proceeded on the basis that the vehicle in question which met with the accident was not a taxi. Accordingly, the appeal was allowed by judgment and order dated August 5, 2003.

4. The respondent-Insurance Company thereafter filed an Interlocutory Application for setting aside this Court's order dated August 5, 2003 and for hearing the matter afresh, explaining the reasons why its counsel could not appear in the Court on the date the matter was listed for hearing. This Court, by order dated March 15, 2004, allowed the Interlocutory Application filed by the respondent-Insurance Company and restored the appeal to its original number. That is how, this appeal has come up before us for hearing today.

5. The learned counsel for the respondent-Insurance Company has taken us to the insurance policy placed on record which shows that the vehicle in question was a car of Ambassador make of 1981 model with carrying capacity of six in all. The policy was "Act-only" policy. He has drawn our attention to a column in the policy wherein "Limitation as to Use" is prescribed which is as follows:

"Use only under a contract carriage permit within the meaning of Motor Vehicles Act, 1939. The policy does not cover use for organised racing or speed testing."

6. In the column meant for calculation of premium, it is stated that the basic premium charged is Rs. 100/- and an additional sum of Rs. 60/- has been charged on account of "Legal Liability to Passengers". This makes the total premium of Rs.160/-.

7. It would thus appear that the vehicle in question was a "motor cab" used as a contract carriage. The vehicle came within the definition of "motor cab" since its carrying capacity was less than six passengers excluding the driver of the vehicle.

8. On the material shown to us, we are satisfied that the insured vehicle was a "motor cab" which was being used for hire or reward and thus covered by Section 95(2)(b)(i) of the Act, which prescribes a limited liability of Rs. 50,000/- only in respect of persons other than passengers carried for hire or reward. In the instant case, the child injured was not a passenger.

9. In this view of the matter, we find no reason to interfere with the impugned judgment of the High Court. This appeal is accordingly dismissed with no order as to costs.

Appeal dismissed.