(2013) 11 KAR CK 0140

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5598 of 2009

Branch Manager, United India Insurance Co. Ltd. APPELLANT

Vs

Manjunatha, Krishna N. and Smt. Savitri RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0140

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy in MFA No. 5598/2009, for the Appellant;

Final Decision : Allowed

Judgement

1. All the three appeals are preferred by the insurer against the common judgment and award passed in MVC Nos. 62, 64, and 66/2007 on the file of the I Addl. District Judge and MACT, Chikmagalur dated 01.10.2008. All the three claim petitions were filed by the respective claimant alleging that in the accident which occurred on 08.01.2006 at about 5.45 PM near the estate of one Nagesh Gowda in Bettadamalalli when they were travelling in the jeep bearing Regn. No. KA-13/M-1756 on account of the rash driving of the same, the accident occurred and all of them sustained grievous injuries in the said accident.

2. The tribunal while allowing their claim petitions by awarding a sum of Rs. 2000/-, Rs. 3000/- and Rs. 18000/- with interest @ 9% p.a fastened the liability on the insurer of the vehicle to indemnify the owner of the vehicle so involved in the accident.

3. Aggrieved by the said fastening of the liability, the respondent/insurer is in appeal inter-alia contending amongst other grounds that as on the date of the accident, the vehicle was not covered with any insurance policy and as such the insurer is not liable to indemnify the owner.

4. Learned counsel appearing for the appellant submitted that in the claim

petition itself, the claimants in each case specifically stated at Col. No. 16 that the vehicle was covered with the policy bearing No. 248481/31/05/02/00010303 upto the period of 22.12.2005 and admittedly, the alleged accident occurred on 08.01.2006 in which event as on the date of accident, the said policy had expired. Further, it is submitted by the learned counsel for the appellant that at paragraph 16 of the impugned judgment while observing the plan taken by the insurance company that the vehicle was covered with the insurance policy from 19.01.2006 to 18.01.2007, the tribunal wrongly held that the insurance company has not proved that there was no insurance policy in existence as on 08.01.2006 and as such, he seeks exonerating the insurance company from indemnifying the owner of the vehicle.

5. Though all the respondents are served with the notice of the above appeals, none of them entered appearance. On perusal of the copy of the claim petition filed by the respective claimant, it is seen that as contended by the counsel for the appellant, the validity of the policy was upto 22.12.2005. Similarly, it is seen that in the statement of objections filed by the respondent/insurer it is pleaded that the vehicle was insured from 19.01.2006 to 18.01.2007. In the circumstances, it is seen that the accident occurred in between the date of expiry of the policy and the date of renewal of the policy i.e. on 08.01.2006 and as such, it is clearly seen that the vehicle as on 08.01.2006 was not covered with any insurance. Hence, the contrary observations made by the tribunal is not proper and as such, all the three appeals are entitled to be allowed.

Hence, the following:

ORDER

All the appeals are allowed modifying the impugned judgment and award so far as it relates to exonerating the liability of the insurer to indemnify the owner of the vehicle, that is the appellant/insurer is exonerated of its liability to indemnify the owner of the vehicle in satisfying the award so passed, and respondents 1 and 2 before the Tribunal in each cases are jointly and severally liable to pay the amount as awarded to claimant in each cases.

Office to draw the award accordingly.

The amount in deposit is ordered to be refunded to the appellant.

