

(2015) 04 KAR CK 0109

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 200782 and 200783/2014 (MV)

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Sidramappa and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(2)

Citation : (2015) 04 KAR CK 0109

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : Preeti Patil Melkundi, for the Appellant

Final Decision : Dismissed

Judgement

Budihal R.B., J.—Since these two appeals are directed against the judgment and award passed by the tribunal and since the common questions of law and facts are involved in both the appeals, they have been taken together, to dispose of them by the common judgment. Both these appeals are preferred by the appellant/Insurance Company, challenging the liability fastened on it, as per the judgment of the tribunal. The Insurance Company has also challenged the legality and correctness of the judgment and award passed by the tribunal on the grounds as mentioned in the appeal memorandum.

2. Heard the arguments of learned counsel appearing for the appellant/Insurance Company in respect of both the appeals and also the learned counsel appearing for the respondent/claimant in both the appeals.

3. Learned counsel for the appellant/Insurance Company during the course of her argument made the submission that the driver of the vehicle i.e., tractor-trailer was not having valid and effective driving licence as on the date of the accident. Hence, there was violation of terms and conditions of the policy by the owner of the vehicle. Therefore, the Insurance Company is not liable to pay the compensation amount. Learned counsel made the submission that the driver of

the said vehicle was holding licence only in respect of light motor vehicle and he was not having licence so far as the trailer is concerned hence, learned counsel submits that the said vehicle becomes transport vehicle. Therefore, it is necessary to possess the licence for driving both tractor and trailer. In support of her contention, learned counsel for the appellant/Insurance Company has relied upon the judgments of the Hon"ble Supreme Court as well as this Court as follows:

"1. Natwar Parikh and Co. Ltd. Vs. State of Karnataka and Others, (2005) 3 ACC 749 : AIR 2005 SC 3428 : (2005) 5 CTC 807 : (2005) 8 JT 39 : (2005) 141 PLR 775 : (2005) 7 SCC 364 : (2005) 2 SCR 1100 Supp : (2005) AIRSCW 4361 : (2005) 6 Supreme 97 .

2. MFA No. 32560/2011 in the case of Mohammed @ Mohd. Haneef v. Mallayya @ Mallappa.

3. Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, (2009) ACJ 1411 : AIR 2009 SC 2151 : (2009) CLT 864 : (2009) 154 PLR 25 : (2009) 3 SCALE 749 : (2009) 11 SCC 356 : (2009) 2 SCR 695 .

4. MFA No. 6495/2009 in the case of The Branch Manager v. S. Lakkanna @ Lakkappa.

5. National Insurance Co. Ltd. Vs. Kaushalaya Devi and Others, (2008) ACJ 2144 : AIR 2008 SC 2252 : (2008) 3 CLT 894 : (2008) 152 PLR 375 : (2008) 8 SCC 246 : (2008) AIRSCW 4025 : (2008) 4 Supreme 441 "

4. Per contra, learned counsel appearing for respondent/claimant submitted that the appeals itself are not maintainable in view of Section 173(2) of the Motor Vehicles Act, 1988. Learned counsel has drawn the attention of this Court to the said provision and made the submission that when the amount awarded by the tribunal is less than Rs. 10,000/-, the appeals itself are not maintainable. Hence, he submitted that on this ground itself the appeal is liable to be dismissed. In support of his contention, he relied upon the decision of this Court dated 20.03.2015 rendered in MFA No. 200266/2015 and another decision rendered in MFA No. 31566/2009 dated 02.03.2010.

5. Perused the grounds urged in the appeal memorandum in both the appeals, the judgment and award passed by the tribunal, the oral and documentary evidence adduced by the parties before the tribunal and the principles in the decisions referred above.

6. Perusing the judgment and award passed by the tribunal in these two appeals, admittedly even according to the Insurance Company, the amount awarded by the tribunal was less than Rs. 10,000/-. But according to the contention of the learned counsel for the respondent/claimant in these two appeals, it is submitted that when the liability has been challenged by the Insurance Company, these appeals are not maintainable when the amount awarded is less than Rs. 10,000/-. I have perused the provision of Section 173(2) of the MV Act, which

reads as under:

"173(2)- No appeal shall lie against any award of a claims tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

7. Looking to the said provision, there is no mention that if the appeals have been filed challenging liability by the Insurance Company, Corporation or any other person, they are maintainable and this restriction is only in case when the appeals are preferred, seeking enhancement of compensation amount. In the absence of such mention in the said section, the contention of the learned counsel for the appellant/Insurance Company that the appeals are maintainable cannot be accepted at all. Therefore, in view of this legal bar to maintain the appeals, in my opinion both the appeals are not maintainable and hence, they are dismissed as not maintainable.

The amount in deposit before this Court is to be transferred to the concerned tribunal.