(2019) 09 KAR CK 0007

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 23334, 24717 Of 2011 (Mv)

Divisional Mangaer APPELLANT

Vs

Gourabai RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 10(2), 166

Citation : (2019) 09 KAR CK 0007

Hon'ble Judges : K. Natarajan, J

Bench : Single Bench

Advocate : G.N.Raichur, Vittal.S. Teli

Final Decision : Disposed Off

Judgement

1. Though these appeals came up for admission, with the consent of both the counsels, they are heard finally.

MFA No.23334/2011 is filed by the Insurer, whereas MFA No.24717/2011 is filed by the claimants assailing the judgment and award dated 21.04.2011 passed by the III Addl. Senior Civil Judge and Addl. MACT, Belgaum (hereinafter referred to as 'the Tribunal') in MVC No.1956/2010.

2. Heard the arguments of learned counsel for the appellant-Insurer as well as the respondents-claimants in both these appeals.

3. The rankings of the parties before the Tribunal is retained for brevity.

4. The claimants who are legal heirs of one Ganesh Ravaji Patil, who died in the road traffic accident, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short), claiming compensation of Rs.10,00,000/-, inter alia contending that, On 28.08.2010 at about 8.30 a.m., when the said Ganesh Ravaji Patil was proceeding to bring rice from Sunandabai Nago Patil and when he was going on the left side of the road, at that time, a rider of Hero Honda Splendor Motorcycle bearing registration

No.KA-22/U-6741, came from Lokolli side proceeding towards Khanapur in a rash and negligent manner with excessive speed, so as to endanger human life, lost control over his vehicle and dashed against the said Ganesh and caused accident. Due to which the said Ganesh died in the accident. The claimants being the wife and son of deceased filed the petition claiming compensation.

In pursuance to the notice, the respondent No.1- owner of the vehicle remained ex-parte. The respondent No.2-Insurer filed statement of objections by resisting the claim of petitioner and denied the accident in question. However, they admitted the issuance of policy but taken the contention that the rider of the motorcycle did not hold valid and effective driving license as on the date of the accident. Therefore, it was contended that if any liability the same shall be fixed on the owner of the motorcycle and not on the Insurer. Hence, prayed for dismissal of the petition.

Based on the rival pleadings, the Tribunal framed the following issues:

i. Whether the petitioner proves that due to rash and negligent driving of Hero Honda Splendor motor cycle bearing No.KA-22/U-6741 the accident occurred resulted in the death of Ganesh?

ii. Whether the petitioners are entitled for compensation?

iii. What order or award?

To substantiate their contention, the claimant No.1 examined herself as PW1 and got marked eight documents at Exs.P1 and P8. On behalf of respondent RW.1 has been examined and got marked Ex.R1 Insurance Policy.

After considering the evidence on record, the Tribunal answered issue No.1 in the affirmative and allowed the petition in part awarding compensation of Rs.1,70,000/- under the following heads with interest at 6% p.a. and directing the insurer to pay the award amount.

1.

Loss of Dependency

Rs.1,20,000.00

2.

Loss of consortium

Rs.20,000.00

3.

Loss of love and affection

Rs.20,000.00

4.Funeral expenses &

Rs.10,000.00

transportation of dead body

TOTAL

RS.1,70,000.00

Assailing the judgment and fastening the liability the Insurer filed MFA No.23334/2011, whereas claimants filed MFA No.24717/2011 for enhancement of compensation.

5. The learned Counsel for the Insurer vehemently contended that the rider of the motorcycle was holding driving license only for HMV as per Ex.P8 but he is not holding the driving license for riding the motorcycle with gear i.e., Hero Honda Splendor and thereby violated the conditions of the policy. Where the owner of the vehicle entrusted the motorcycle to a person who did not have a valid and effective driving license to drive the motorcycle, the liability fastened on the Insurer is not correct. It is also contended that any judgment cannot over rule the provisions of law.

In support of his contention, the learned counsel relied upon the following judgments of the Hon'ble Supreme Court and the Division Bench of this Court:

i. V.Kishan Rao Vs Nikhil Super Speciality Hospital and another reported in 2011 Kant.

MAC 556 (SC)

ii. M/s United India Insurance Co. Ltd., Vs Shri R.S.Shivarammayya and another reported in

iii. Oriental Insurance Company Limited Vs Zaharulnisha and Others reported in (2008) 12 SCC 385.

6. Per contra, learned counsel for the respondents-claimants contended that, though the rider of the motorcycle was holding HMV licence, but he is also not prohibited to drive the motorcycle with gear and therefore the learned counsel supported the judgment and award passed by the Tribunal.

In support of his contention he relied upon the judgment of Division Bench of this Court in the case of Srinivasagowda and Another Vs Smt. Sannamma and Others reported in 2011 (5) Kar. L.J. 578 (DB) and further contended that, in case this Court comes to the conclusion that there is violation of Insurance Policy in respect of not holding license to drive the motorcycle, then in third party petition claims, the Insurer shall satisfy the award and then recover from the owner. In support of his argument the learned counsel also relied upon the following judgments of the Hon'ble Supreme Court and this Court:

i. Oriental Insurance Company Limited Vs Zaharulnisha and Others reported in (2008) 12 SCC 385

ii. Shamanna and Another Vs Divisional Manager, Oriental Insurance Company Limited And Others reported in (2018) 9 SCC 650

iii. Pappu and Others Vs Vinod Kumar Lamba And Another reported in (2018) 3 SCC 208 and,

iv. The Divisional Manager, Oriental Insurance Company Vs. Shafiulla and others in MFA NO.5643/2010

Hence he prayed for dismissal of the appeal.

7. Upon hearing the learned counsel for both the parties and perusal of the records, the points that arise for my consideration are:

i. Whether the Tribunal is not justified in fastening the liability on the Insurer in view of the driver of the motorcycle not holding the driving licence for riding the motorcycle, though having DL for HMV?

ii. Whether the claimant is entitled for enhancement of compensation?

iii. What order?

8. The claimant has established the factum of accident dated 28.08.2010 that was occurred due to the rash and negligent riding by the rider of the Hero Honda Splendor motorcycle bearing registration No.KA-22/U-6741 and due to which Ganesh Ravaji Patil died. The dispute is only in respect of fastening of liability on the Insurer.

9. The learned counsel for the Insurer contended that, as per the documents produced by the claimants, Ex.P8 - Driving License, the rider of the motorcycle was holding driving licence to drive Light Motor Vehicle, but not two wheeler. Though the learned counsel for the claimants by relying upon the judgment of the Division Bench of this Court in case of Srinivasagowda and Another (supra), wherein it is held that, though the driver is holding HMV, but he is deemed to have possessed the valid licence to drive the Scooter and the Insurance Company is held liable. The learned counsel for the appellant Insurer brought to the notice of this Court that, Section 10(2) of the Act clearly classify the vehicles requirement of the driving licence. Section 10(2) reads as follows:

"SECTION 10(2):-

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle; 1[(e) transport vehicle;] 1[(e) transport vehicle;]"

(i) road-roller;

(j) motor vehicle of a specified description."

10. The Hon'ble Apex Court also in identical case reported in 2008 (12) SCC 385 in the case of Oriental Insurance Company Limited Vs. Zaharulnisha and Others (supra), at para 21 and 22 held as under:

"21. In the light of the above-settled proposition of law, the appellant insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act.

22. In the result, the appeal is allowed to the limited extent and it is directed that the appellant insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. v. Baljit Kaur and Others [(2004) 2 SCC 1] and Deddappa and Others v. Branch Manager, National Insurance Co. Ltd. [(2008) 2 SCC 595]".

11. In another case reported in 2018 (3) SCC 208 in the case of Pappu and Others Vs. Vinod Kumar Lamba and Another, the Hon'ble Apex Court taken similar view in the third party liability of the Insurance Company. The offending vehicle if driven by an uuauthorised person or that person driving vehicle did not have a valid driving licence, if established, then the Insurance Company shall satisfy the award and then recover the same from the owner of the vehicle.

12. In the instant case, Ex.P8 (Driving Licence) produced by the claimants itself clearly shows that the driving licence held by the rider of the motorcycle is not valid as per Section 10(2) of the Act, whereas he is holding licence for LMV. But he was found driving different class of vehicle, i.e., motorcycle with gear. Therefore, there is clear violation of the conditions of the policy - Ex.R1 produced by the Insurer. Therefore, the Tribunal committed error in fastening the liability on the Insurance Company. However, in view of the judgments of the Hon'ble Apex Court in the case of Zaharulnisha (supra) as well as in Pappu and Others (supra), the Insurance Company shall satisfy the award in the first instance and then can recover the same from the owner of the motorcycle in question.

13. Therefore, by considering the facts and circumstances of the case, the appeal filed by the Insurer deserves to be allowed in part in respect of fastening liability

on the owner of the vehicle. Hence I answer point No.1 in favour of the insurer and against the owner of the vehicle.

14. As regards the appeal filed by the claimants, the claimants have dispensed with the issuance of notice to the owner of the vehicle. The appeal filed by the claimants cannot be held against the person who was not made as party in the appeal who is necessary party. Therefore, the appeal filed by the claimant deserves to be dismissed.

15. Consequently, the appeal filed by the Insurance Company in MFA No.23334/2011 is allowed in part and the appeal filed by the claimant in MFA No.24717/2011 is dismissed. However, it is clarified that the Insurance Company is at liberty to recover the amount after satisfying the award as per the principle laid down by the Hon'ble Apex Court in judgments cited supra. The amount in deposit is ordered to be transmitted to the Tribunal forthwith.

In the above terms, both the appeals are disposed of.