(2015) 08 KAR CK 0382

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21747/2009(MV)

Ganesh Cheluvadi APPELLANT

Vs

Premkumar and Others RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0382

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : Hanumanthareddy Sahukar, for the Appellant

Final Decision : Allowed

Judgement

S. Sujatha, J—This is claimant''s appeal assailing the judgment and award of the MACT, Hospet in MVC No. 613/2007 dated 07.01.2009.

2. It is contended by the appellant that on 20.02.2007 at 6.00 PM near Basavana Canal Road, when the appellant was going in bicycle, a Scorpio bearing No. KA-25/N-5909 came in a rash and negligent manner and hit the appellant as a result of which, he fell down and sustained grievous injuries. Insurance company contested the matter and a defence was taken that there was no existence of contract under the cover note No. 700974 on the ground that cheque issued by the owner of the vehicle in respect of a premium was dishonoured and after intimating the dishonour of cheque to the owner of the vehicle as well as the financier, the accident had occurred. On account of dishonour of cheque issued towards payment of premium, their being no privity of contract between the owner of the offending vehicle and the insurer, the 3rd respondent is not liable to pay any compensation. Though the owner was served, he remained unrepresented and was placed ex-parte.

3. The Tribunal after considering the evidence placed by both the parties and placing reliance on the Judgment of the Apex Court in the case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., (2008) ACJ 581 :

AIR 2008 SC 767 : (2008) 1 CLT 162 : (2008) 149 PLR 775 : (2007) 14 SCALE 257 : (2008) 2 SCC 595 held that insurance company is not liable to pay the compensation when there is no contract between the owner of the vehicle and the insurance company. However, the total compensation of Rs. 20,000/- was determined and the liability was fastened on the respondent/owner of the offending vehicle to pay the compensation amount with interest @ 6% p.a. to the claimant.

4. Even in the appeal proceeding, respondent No. 2 - owner remained unrepresented. Learned counsel for the appellant contended that the accident occurred on 20.02.2007, cancellation of the cover note said to have been made on 27.11.2006 was not intimated to the owner, no proof of postal receipt or the postal acknowledgement is produced by the insurance company to establish that the intimation of cancellation has reached the insured before the accident.

5. On the other hand, learned counsel appearing for the 3rd respondent - insurance company argued that the premium amount paid by the owner towards the policy through cheque dated 22.11.2006 drawn on Karnataka Vikas Grameena Bank, Dharwad was dishonoured on 24.11.2006 i.e., much before the accident, the insurance company also intimated regarding dishonour of cheque to the owner of the vehicle, RTO and the financier as per Exs. P.5 to P.9. Respondent No. 3 had not issued policy on account of non-payment of premium amount. In view of the same, the insurance company i.e., the 3rd respondent is not liable to pay compensation amount to the petitioner. Learned counsel also placed reliance on the Judgment of the Apex Court reported in

"(1) National Insurance Co. Ltd. Vs. Parvathneni and Another, (2009) 12 JT 275 : (2010) 157 PLR 228 : (2009) 12 SCALE 82 : (2009) 8 SCC 785 : (2009) 13 SCR 1034

(2) Ujawalvant Bhojappa Kamble v. Indira B.S. (MFA 23209/2012 disposed off on 21.07.2015)"

6. On hearing learned counsel and perusing the record, it is noticed that Ex. R.6 said to be the cancellation order of the cover note (insurance note) dated 27.11.2006 is not accompanied with a postal receipt for having sent the same to the owner or any other acknowledgement is produced for having communicated the same to the owner. Even no postal acknowledgement is forth coming to establish that the intimation of cancellation of the policy was brought to the knowledge of the owner/insured before the occurrence of the accident though it is asserted by the insurer that the same was communicated through RPAD.

7. In the case of Ujwalvant Bhojalppa Kamble cited by the learned counsel for the insurance company, it was a case where the policy had expired and the cheque issued for renewal had bounced, the same was acknowledged by the owner on 09.01.2010. The accident occurred three months thereafter i.e., on 31.3.2010. Hence, relying on the Judgment of the Supreme Court reported in National Insurance Co. Ltd. Vs. Seema Malhotra and Others, (2001) ACJ 638 :

AIR 2001 SC 1197 : (2001) 3 JT 58 : (2001) 2 SCALE 140 : (2001) 3 SCC 151 : (2001) 1 SCR 1131 : (2001) 2 UJ 1113 : (2001) AIRSCW 902 : (2001) 2 Supreme 92 , it is held that since there was no existing insurance policy, finding of the Tribunal absolving the insurance company and holding owner of the vehicle to satisfy the award is just and proper and does not call for interference.

8. In the case of United India Insurance Co. Ltd. Vs. Laxmamma and Others, (2012) ACJ 1307 : AIR 2012 SC 2817 : (2012) 4 SCALE 409 : (2012) AIRSCW 2657 : (2012) 3 Supreme 105 , the Apex Court has categorically held as under:

"14. In New India Assurance Co. Ltd. Vs. Rula and Others, (2000) 2 ACC 751 : (2000) ACJ 630 : AIR 2000 SC 1082 : (2000) 100 CompCas 711 : (2000) 2 CTC 179 : (2000) 3 JT 37 : (2000) 125 PLR 765 : (2000) 2 SCALE 255 : (2000) 3 SCC 195 : (2000) 2 SCR 148 : (2000) AIRSCW 788 : (2000) 2 Supreme 158 the Court was concerned with a question very similar to the question posed before us. That was a case where the insurance policy was issued by the New India Assurance Co. Ltd. in terms of the requirements of the M.V. Act but the cheque by which the owner had paid the premium bounced and the policy was cancelled by the insurance company but before the cancellation of the policy, accident had taken place. A two-Judge Bench of this Court considered the statutory provisions contained in the M.V. Act and the judgment in Inderjit Kaur. In paragraph 13 (at 0), the Court held as under:

"13. This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party"

9. Applying the said principles enunciated by the Apex Court which is squarely applicable to the facts of the case, the cheque being paid towards premium by the insured to cover the vehicle before the accident of the vehicle and the cheque being dishonoured before the accident, insurance company cancelling the policy of insurance unilaterally, and not producing the acknowledgement for having communicated the intimation thereafter to the owner, would not absolve the insurance company''s liability to indemnify the owner. In other words, when the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorised insurer to indemnify the owner in respect of liability which that policy covers subsists and is bound to satisfy the award of compensation unless, the policy of insurance is cancelled by the authorised insurer and

intimation of such cancellation has reached the insured before the accident.

10. In the present case, though it is contended by the insurance company that pursuant to dishonour of the cheque, the policy of insurance was cancelled and intimation of such cancellation has reached the insured, no proof is produced to establish that such intimation of cancellation having reached the insured/owner of the vehicle before the accident. The defence taken by the insurer to exonerate the liability is thus unsustainable. The judgments relied on by the learned counsel for respondent No. 3 is not applicable to the facts of the present case.

11. As regards the enhancement of compensation is concerned, the Tribunal has determined the income of the deceased at Rs. 3000/- per month though the claimant was working under the wholesaler as collecting agent and drawing salary of Rs. 2000/- per month and Rs. 1000/- as incentive. The Tribunal considering the grievous injuries sustained by the claimant, awarded global compensation of Rs. 20,000/- with interest @ 6% p.a. It is forthcoming from the wound certificate - Ex. P.5 that the claimant had sustained grievous injuries which is further fortified by the x-ray referred in the wound certificate clearly discloses the fracture of left leg. In the absence of any evidence produced by the claimants towards the amount incurred towards medical expenses, the Tribunal has determined the global compensation. Considering the gravity of injuries suffered by the claimant which is proved by these exhibits, amount of Rs. 20,000/- is meagre. In the considered opinion of this Court the same requires to be enhanced to Rs. 40,000/- with interest @ 6% p.a. from the date of petition till realisation.

12. Accordingly, appeal is allowed. Respondent No. 3 shall deposit the enhanced compensation amount of Rs. 20,000/- with interest @ 6% p.a. from the date of petition till realisation within six weeks from today before the Tribunal. The claimant is at liberty to withdraw the same.

