(1972) 04 KAR CK 0004

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1 of 1970

Hindustan Ideal Insurance Co. Ltd. APPELLANT

Vs

Pappu Poojary and Others RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:
Motor Vehicles Act, 1939 — Section 95 (1) (b), 96, 96 (1), 96 (2)

Citation : (1974) 44 CompCas 6 : (1972) 2 MysLJ 74

Hon'ble Judges : M. Sadanandaswamy, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : B.V. Balaji, for the Appellant; P. Ganapathy, for the Respondent

Judgement

Chandrashekhar, J.—Has the Commissioner under the Workmen''s Compensation Act jurisdiction make against the insurer of a motor vehicle, an award of compensation for death of, or injury to, a person in an automobile accident in the course of his employment as a driver of that vehicle ? This is the principal question that arises for determination in this appeal u/s 30 of the Workmen''s Compensation Act, 1923 (hereinafter referred to as the Act).

2. Certain material facts are not in dispute. Respondent Nos. 1 and 2 are the parents and respondents Nos. 3 and 4 are sisters of Sanjeeva Poojary who was employed by respondent No. 5 herein as driver of motor car. While driving that car Sanjeeva Poojary met with accident on August 11, 1966, resulting in his death. As dependents of Sanjeeva Poojary, respondents Nos. 1 to 4 made an application u/s 22 of the Act before the Commissioner for Workmen''s Compensation, Mangalore (hereinafter referred to as "the Commissioner"), claiming a compensation of Rs. 7,000 on the basis that the monthly salary of Sanjeeva Poojary was Rs. 150.

3. The owner of the car (respondent No. 5 herein) admitted practically all the averments in that application and pleaded that as his car had been insured with the appellant, he was not liable to pay any compensation to the applicants

(respondents Nos. 1 to 4 herein) and that if the Commissioner were to come to the conclusion that any compensation was payable to them, the same had to be paid by the insurer (the appellant).

4. The insurer filed objection in which it pleaded, inter alia, that the policy of insurance did not cover the claim advanced in that application, that the commissioner had no jurisdiction to entertain such claim in view of the procedure laid down under the Motor vehicles act, 1939 (hereinafter referred to as "the M.V. Act"), and that it (the insurer) was not answerable for any claim before the Commissioner.

5. The Commissioner held that Sanjeeva Poojary died out of injuries sustained in the accident and in the course of his employment, that his monthly salary or wage immediately before his death was Rs. 150, that the applicants (respondents No. 1 to 4 herein) were dependents of Sanjeeva Poojary and were entitled to compensation under the Act and that under the policy of insurance, the insurer who had undertaken the legal liability in respect of the driver, was liable to pay such compensation. The Commissioner assessed the compensation at Rs. 7,000 apportioned it among the applicants and directed the insurer to deposit on behalf of the owner of the car that amount with him (the Commissioner).

6. In this appeal Mr. B. V. Balaji, learned counsel for the appellant (the insurer), urged the following contentions :

(i) Under the policy of insurance there was no liability on the part of the insurer to pay any compensation under the Act in respect of the death of a person employed to drive the motor vehicle, and

(ii) The Commissioner had no jurisdiction to award any compensation against the insurer.

7. The insurance policy issued by the appellant to the owner of the car (respondent No. 5) has been produced and marked as exhibit R-1. The title of section II of the policy is : "Liability to Third Parties". clause 1 of section II reads :

"1. The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant''s costs and expenses which the insured shall be legally liable to pay in respect of -

(a) death or bodily injury to any person but except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured;

(b) damage to property other than property belonging to the insured for held in trust by or in the custody or control of the insured ".

8. Section 94 of the Motor Vehicles provides, inter alia, that a motor vehicle shall be insured against third party risks.

9. The material portions of sub-section (1) of section 95 of the Motor Vehicles Act, as it stood on the date of the issue of the policy as well as on the date of the accident, read as follows :

"95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which - .....

(b) Insures the person or classes or persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen''s Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or ....."

Mr. Balaji contended that the words "except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such person by the insured", occurring in sub-clause (a) of clause 1 of section II of the policy of insurance, excluded the liability of the insurer of indemnify the insured against any liability for death of, or injury to, any person arising out of and in the course of his employment by the insured. Mr. Balaji added that the insurer was not liable to pay any compensation for the death of Sanjeeva Poojary in the course of his employment under the insured (respondent No. 5).

10. The above argument of Mr. Balaji overlooks the effect of the words "except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939", occurring in that sub-clause in the policy of insurance. That sub-clause excludes the liability in respect of death of, or injury to, any person arising out of and in the course of his employment under the insured except where such liability is required by section 95 of the M.V. Act to be covered by the policy of insurance. As seen earlier, sub-section (1) of section 95 of the M.V. Act, as it stood at the relevant dates, expressly provided that a policy of insurance shall cover the liability under the Act (the Workmen''s Compensation Act) in respect of death of, or bodily injury to, a person engaged in driving the vehicle. Hence, in view of the above said exception in that sub-clause, Mr. Balaji is not right in contending that sub-clause (a) of cause 1 of section II the policy, included in liability under the Act (the Workmen''s Compensation Act) in respect of the death of, or injury to, the person engaged in driving the vehicle. The liability of the insurer is made clear by the contents of the slip attached to the policy of insurance. That slip reads :

"Liability u/s 95(3) of the Motor Vehicles Act, 1939 :

"Notwithstanding anything to the contrary contained herein the company undertakes to indemnify the insured in respect of the liability under the provisions of the Workmen''s Compensation Act, 1923, against which he is required to insure by virtue of Chapter VIII of the Motor Vehicles Act, 1939, arising out of the use of any vehicle described in the schedule.

"Subject otherwise to the terms, exceptions, conditions and limitations of this policy."

11. However, Mr. Balaji contended that since sub-section (3) of section 95 of the M.V. Act had been deleted by the Motor Vehicles (Amendment) Act, 1956, that sub-section was non-existent on the date of the issue of the insurance policy and that the contents of the aforesaid slip (attached to the policy) which referred to that non-existent sub-section should be regarded as having no legal effect.

12. It is true that both on the date on which the insurance policy was issued and on the date of the accident, sub-section (3) of section 95 was non-existent. That sub-section, before it was repealed, read as follows :

"The State Government may prescribe that a policy of insurance shall, in order to comply with the requirements of this chapter, cover any liability arising under the Workmen''s Compensation Act, 1923, in respect of the death of, or bodily injury to, any body engaged by a person or otherwise in attendance or being carried in a motor vehicle."

13. When sub-section (3) of section 95 was repeated by the amendment Act of 1956, sub-section (2) of that section was amended so as to include a provision to the effect that the policy of insurance should cover the liability under the Act (the Workmen''s compensation Act) in respect of the death of, or bodily injury, to an employee engaged to drive the vehicle.

14. The mention of sub-section (3) of section 95 in the heading of the slip attached to the insurance policy was an obvious error. But the mere mention of a wrong provision of law does not affect the validity of the contents of that slip which expressly provided for covering the liability under the Act in respect of the death of, or bodily injury to, an employee engaged to drive the vehicle, as required by virtue of Chapter VIII of the M.V. Act.

15. Thus, there is no substance in the contention of Mr. Balaji that the insurance policy did not cover the liability of the insured (respondent No. 5) under the Workmen''s Compensation Act in respect of the death of Sanjeeva Poojary in the course of his employment.

16. Mr. Balaji next contended that even if the insurer is liable to indemnify the insured against the liability under the Act for the death of, or bodily injury to, the person employed to drive the vehicle, such liability can be enforced only by the insured in appropriate proceedings and that the Commissioner had no jurisdiction

to make an award against the insurer on an application under the Act by such driver if he is injured or by his dependents in case of his death. Mr. Balaji maintained that there is no provision in the Act to make an award against the insurer even though the policy of insurance issued by him covers such liability. Mr. Balaji added that the only provision in the Act which enables an award being made against the insurer is section 14 and that in the present case that section has no application, because the insured (respondent No. 5) was not adjudged as insolvent.

17. Section 14 of the Act provides, inter alia, that where any employer has entered into a contract with any insurer in respect of any liability under the Act of any workmen, then in the vent of the employer becoming insolvent or where the employer is a company, in the event of that company having commenced to be wound up, the rights of the employer against the insurer as respects that liability, shall be transferred to, and vest in, the workmen. This section corresponds to section 97 of the M.V. Act which provides that where under any contract of insurance effected in accordance with the provisions of Chapter VIII of that Act a person is insured against liability which he may incur to third parties, then in the event of such person becoming insolvent, or where the insured person is a company in the event of the winding-up order being made, the rights of such person against the insurer shall be transferred to and vest in the third party to whom the liability is so incurred.

18. Mr. Balaji is right, in our opinion, in contending that section 14 of the Act has no application to the present case and that there is no other section in the Act which expressly provides that the injured workmen or the dependents of the deceased workmen can proceed under the Act against the insurer who has undertaken to indemnify the employer against the liability under the Act.

19. But sub-section (1) of section 96 of the M.V. Act provides, inter alia, that where after a certificate of insurance has been issued u/s 95 of the Act in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by policy, under clause (b) of sub-section (1) of section 95 (being the liability covered by the terms of the policy), is obtained against any person insured by the policy, the insurer shall pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest of such sum.

20. Sub-section (2) of section 96 provides, inter alia, that the insurer shall not be liable to pay any sum under sub-section (1) of that section in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the court of the bringing of such proceedings and that the insurer to whom notice of the bringing of such proceedings is given shall be entitled to be made a party thereto, and to defend the action on the grounds specified in clauses (a) to (c) of that sub-section.

21. However, Mr. Balaji contended that sub-section (1) of section 96 of the M.V. Act does not confer jurisdiction on the Commissioner to render the insurer liable for the compensation under the Act. In support of his contention Mr. Balaji relied on the following observations of Gopalakrishnan Nair J., who spoke for the Bench, in New Asiatic Insurance Co. Ltd. v. Kulwanti Devi :

"It is apparent that this section (section 96 of the M.V.Act) is only a declaratory provision. It seems an insurer to be a judgment-debtor when a decree is passed against an insured under certain circumstances rendering him liable to a third party. It does not contemplate the passing of a decree against the insurer himself."

21. His Lordships also observed that the liability of the insurer, which section 96(1) of the M.V. Act declares, is based on the terms and conditions of the contract of insurance between the insured and the insurer. His Lordships pointed out that in that case the terms and conditions of the contract of insurance were not known. But, in the present case, there is no such difficulty because under the terms of the insurance policy the insurer is liable to indemnify the insured in respect of the liability under the Act to pay compensation for death of, or bodily injury to, the driver of the motor vehicle.

22. Mr. Balaji next relied on the following observations of Bhargava J., in R. B. Moondra and Co. v. Mst. Banwari while dealing with the question whether the insurer is liable to pay compensation under the Act for the death of the driver of a motor vehicle :

"...... the Act (the Workmen''s Compensation Act) as appears from its preamble was enacted to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. The term ''employer'' has been defined in the Act and the insurance company does not come within the ambit of that definition. Therefore, the Commissioner appointed under the Act will have no jurisdiction to award compensation to a workman against the insurance company unless the case falls within section 14 of the Act which deals with the liability of the insurers when the employer becomes insolvent, where he has entered into a contract with any insurer in respect of any liability under this Act. Obviously, section 14 has no application in this case. Learned counsel, however, relied upon the provisions of sections 96(1) and (2) of the Motor Vehicles Act. u/s 96(1) an insurer is deemed to be a judgment-debtor when under certain circumstances a decree is passed against the insured. But it does not contemplate passing of a decree against the insurer himself. Section 96(2) provides that the insurer shall not be liable under sub-section (1) unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice though the court of the bringing of the proceedings ...."

23. We are in respectfully agreement with the proposition enunciated in the aforesaid two decisions that sub-section (1) of section 96 of the M.V. Act does not contemplate passing of a decree against the insurer himself. But it does not

follow from that proposition that in a proceeding before the Commissioner on an application claiming compensation for injury to, or death of, a person employed to drive a vehicle, the insurer cannot be impleaded as party under sub-section (2) of section 96 of the M.V.A Act, or that the Commissioner cannot declare that the insurer is liable under sub-section (1) of section 96 of the M.V. Act, to pay the driver or his dependents any sum awarded against his employer under the Act, as if the insurer were the judgment-debtor.

24. Though the provisions of the Act do not expressly provide for impleading the insurer in an application u/s 22 claiming compensation or for the Commissioner declaring the liability of the insurer to pay the sum awarded against the employer, there is no impediment, in our opinion, for invoking the provisions of sub-sections (1) and (2) of section 96 of the M.V. act in such proceedings under the Act.

25. The word "judgment" occurring in sub-sections (1) and (2) of section 96 of the M.V. Act has not been defined in the Act. According to the shorter Oxford Dictionary, judgment means a judicial decision or order of a court.

26. There is no reason why a decision of the Commissioner awarding compensation under the Act cannot be regarded as a judgment for the purpose of section 96 of the M.V. Act.

27. Thus, we are unable to accede to the contention of Mr. Balaji that the appellant (the insurer) could not have been impleaded as a party in the proceeding before the Commissioner in which respondents Nos. 1 to 4 herein claimed compensation and that the commissioner could not have made a declaration of the liability of the insurer to pay the compensation as if he were the person against whom the award of compensation had been made.

28. Mr. Tukaram Pai, learned counsel for respondent, No. 5 (the owner of the car), has no objection to our modifying the award of the Commissioner so as to make that award against respondent No. 5 herein instead of the appellant and to declare the liability of the appellant (the insurer) to pay such compensation as if the award had been against it (the insurer).

29. In the result, this appeal is allowed in part and in modification of the award of the Commissioner, the award of compensation of Rs. 7,000 in favour of respondents Nos. 1 to 4 herein is made against respondent No. 5 herein and it is hereby declared that the appellant shall be liable to pay such compensation to respondents Nos. 1 to 4 herein as if the award had been made against it (the appellant). The apportionment of compensation amongst respondents Nos. 1 to 4 herein, made by the Commissioner, shall stand undisturbed.

30. In this appeal, we direct the parties to bear their own costs.

