
(2004) 02 KAR CK 0010

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 2048 of 2001 and 4304 of 2000

K.C. Ajjanna and Another

APPELLANT

Vs

S.M. Nagaraja and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Citation : (2004) ACJ 1469 : (2004) ILR (Kar) 3084 : (2004) 4 KarLJ 64 : (2004) 2 KCCR 1010

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Balappa M. Irali, for the Appellant; S. Channarayana Reddy, for Respondent- 1, B.A. Ramakrishna, for Respondent- 4, O. Mahesh, for Respondent- 4, G.R. Manohar, for Respondent- 5 and K. Suresh, for Respondent- 5, for the Respondent

Judgement

K.L. Manjunath, J.—M.F.A. No. 2048 of 2001 is filed by the owner of the vehicle who were the 1st and 2nd respondents before the Tribunal. Appellant in M.F.A. No. 4304 of 2000 was the claimant before the Tribunal. Claimant-S.M. Nagaraja presented claim petition claiming compensation on account of the injuries sustained by him in a road traffic accident occurred on 26-6-1988. According to him, on 26-8-1988 at about 5 p.m. he was a pillion-rider of scooter bearing No. MER-2964 and one Rajanna was driving the scooter. When they were proceeding near Tubagere, a car bearing No. CKL-9086 which was coming from the opposite direction in a rash and negligent manner hit the scooter due to which petitioner sustained grievous injuries on his head and also sustained fracture of left thigh. He was immediately shifted to Victoria Hospital, Bangalore, and was in-patient from 26-6-1988 to 6-8-1988. His leg was operated and a nail was inserted and due to which he sustained permanent disability and shortening of left leg by half an inch. Therefore, he claimed compensation of Rs. 2,50,000/- against the owner of the car and the insurance company. Respondent 3-insurance company contested the case contending that policy was issued in favour of respondent 2 on 30-5-1988 by collecting a cheque for Rs. 1,176/- and on presentation the said

cheque was dishonoured. Therefore, on 23-6-1988 insurance company cancelled the policy issued in favour of respondent 2. Therefore, respondent 3 is not answerable to satisfy the claim of the claimant. Respondent 2 filed a separate written statement. According to respondent 2 accident was not due to rash and negligent driving of the driver of the car, even if it is held that the accident occurred due to rash and negligent driving of the driver of the car, insurance company has to satisfy the award. According to him, policy was issued by respondent 3 by collecting a cheque for Rs. 1,176/- and a receipt was also issued on 30-5-1988, he had issued a cheque drawn on respondent 4-Raithara Save Sahakara Sangha (N), Singanayakanahalli, Bangalore, wherein he had an account and that cheque sent by respondent 3 was realised on 6-6-1988 and therefore respondent 3 cannot cancel the policy issued in favour of respondent 2. According to him, Syndicate Bank of Singanayakanahalli Branch inadvertently returned the cheque. Therefore, respondent 3 cannot cancel the policy issued in favour of respondent 3. According to him, cheque sent by respondent 3-insurance company for collection was honoured by the banker of respondent 2. Therefore, respondent 3-insurance company is liable to satisfy the award.

2. Based on the above pleadings, following issues were framed for consideration by the Trial Court:

1. Whether the petitioner proves that on 26-6-1988 at about 5 p.m. while the petitioner was proceeding as a pillion-rider in the scooter bearing registration No. MER-2964 and reached near Tubagere that a car bearing registration No. CKL-9086 came at high-speed in a rash and negligent manner from opposite side and dashed the scooter and thereby the petitioner sustained with injuries?

2. Whether respondent 3 proves that as on the date of accident the car bearing registration No. CKL-9086 was not insured and thereby the liability is absolved?

3. Whether the petitioner is entitled for any compensation? If so, for what amount?

4. What order?

3. Claimant was examined as P.W. 1. He also examined Dr. T.R. Nagaraj who treated him at Victoria Hospital as P.W. 2. Petitioner relied upon documents Exs. P. 1 to P. 22. On behalf of the respondents, official of respondent 3 one M. Narayanan was examined as R.W. 1 and 2nd respondent-Narayanappa was examined as R.W. 2. Respondents have produced documents Exs. R. 1 to R. 12. Tribunal after appreciating the evidence adduced by the parties held issue No. 1 in the affirmative, issued No. 2 in the affirmative and awarded a sum of Rs. 58,000/- by holding that the compensation awarded by the Tribunal has to be satisfied by respondents 1 and 2 and the claim against respondents 3 to 6 was dismissed.

4. Being aggrieved by the judgment and award of the Tribunal, owner of the car has filed an appeal in M.F.A. No. 2048 of 2001 contending that the Tribunal has

committed an error in dismissing the petition against the insurance company by holding that the policy was not in force on the date of the accident and that respondent 3 had cancelled the policy due to non-payment of premium. According to the appellant, Tribunal has committed an error in not noticing the fact that the cheque issued by the appellant was honoured by his banker, respondent 4 society. According to him, bank pass-book produced by him has not been properly considered by the Tribunal. It is also the case of the appellant that either the Syndicate Bank or any other Bank inadvertently has returned the cheque with a shara "Refer to drawer" cannot be a ground to penalise the appellant, as the cheque issued by him was honoured by his banker. If any mistake has been committed by the collecting bankers, respondent 3 has no right to cancel the policy issued in favour of respondent 2. According to him, policy obtained by him from respondent 3 was in force. Therefore, he requests this Court to modify the judgment and award of the Tribunal and to fix the liability on respondent 3-insurance company. Claimant being not satisfied with the compensation awarded by the Tribunal, has filed separate appeal in M.F.A. No. 4304 of 2000 seeking enhancement of compensation. According to the learned Counsel for the claimant, Tribunal has not considered that the claimant was in-patient for 40 days and sustained permanent disablement due to which he is limping and his left leg has been shortened by 3/4th of an inch. According to him, claimant has to undergo one more operation for removal of nail which also cost huge expenditure. Therefore, he requests this Court to enhance the compensation awarded by the Tribunal.

5. Per contra, Sri Mahesh appearing for the insurance company contends that the policy was issued by the insurance company subject to encashment of cheque issued by respondent 2 on 30-5-1988 and the said cheque was returned by the banker of respondent 2, therefore respondent 3-insurance company had a right to cancel the policy issued by it. Accordingly, same has been cancelled. He farther contends that when once the policy issued by the insurance company has been cancelled, prior to the accident, even if the bankers viz., Syndicate Bank or Raithara Seva Sahakara Sangha has requested the insurance company or its banker M/s. Corporation Bank for representation of the cheque would not enure to the benefit of respondent 2. Therefore, he requests this Court to dismiss the appeal against the insurance company.

6. Having heard the learned Counsels for the parties in these appeals, this Court has to consider the following points;

Whether the compensation awarded by the Tribunal is just and proper and whether the same is required to be enhanced?

Whether respondent 3-insurance company is liable to satisfy the amount awarded by the Tribunal?

Whether the judgment and award of the Tribunal are required to be set aside or modified?

7. It is not in dispute that the claimant has sustained fracture of his left thigh. It is not in dispute that he was in-patient for about 40 days in Victoria Hospital at Bangalore and that he sustained permanent disability which has been assessed at 10 to 12% to the whole body by P.W. 2. Tribunal has awarded a sum of Rs. 15,000/- under the head medical expenses, Rs. 20,000/- towards pain and suffering, Rs. 8,000/- towards future medical expenses and Rs. 15,000/- towards disability caused. Admittedly, the accident is of the year 1988. He is a permanent employee of KSRTC, Bangalore. There is no reduction in his salary and considering the evidence adduced by the petitioner, this Court is of the opinion that the Tribunal is justified in awarding compensation of Rs. 58,000/- under different heads. There, this Court does not see any reason to interfere with the findings of the Tribunal on the question of quantum of compensation.

8. Then the next question to be considered by this Court in these appeals is whether respondent 3-insurance company is liable to indemnify respondent 2-owner who is the appellant in the first appeal. It is not in dispute that on 30-5-1988 respondent 3 has issued a policy in favour of respondent 2 by collecting a cheque for Rs. 1,176/-. Ex. R. 10 is the receipt issued by respondent 3 in favour of respondent 2. Ex. R. 11 is the pass-book of respondent 2 maintained with Raithara Seva Sahakara Sangha Niyamitha, Singanayakanahalli. Ex. R. 11(a) is an entry in the pass-book of respondent 2 to show that cheque bearing No. 4595 issued by respondent 2 in favour of 3rd defendant has been cleared. From this entry it is clear that on 6-6-1988 itself cheque sent by respondent 3 through its banker has been cleared by the banker of respondent 2. But, respondent 3 has produced Ex. R. 1 which is a Return Memo of the Syndicate Bank, Yeshwanthpur dated 18-6-1988. As per Exs. R. 1 and R. 2 cheque bearing No. 140999 issued on Syndicate Bank has been returned. Ex. R. 2 is an endorsement issued by the Corporation Bank. Exs. R. 1 and R. 2 are referred to in respect of the cheque which is produced as Ex. R. 3. Ex. R. 3 is a cheque said to have been issued by Raithara Seva Sahakara Sangha Niyamitha, Singanayakanahalli to the Corporation Bank which is the bank of respondent 3. The said cheque was issued by Raithara Seva Sahakara Sangha Niyamitha to the Corporation Bank on 10-6-1988. Ex. R. 4 is an endorsement issued by the Corporation Bank to show that cheque bearing No. 4595, dated 30-5-1988 issued by respondent 2 to respondent 3 drawn on Raithara Seva Sahakara Sangha Niyamitha, respondent 4 has not been honoured. Ex. R. 5 is a letter addressed by respondent 4-Raithara Seva Sahakara Sangha Niyamitha, to the Corporation Bank on 10-6-1988 enclosing a cheque for Rs. 1,176/- viz., Ex. R. 3 for having collected the cheque amount of Rs. 1,176/-. Ex. R. 8 is a letter of respondent 4-Raithara Seva Sahakara Sangha Niyamitha dated 5-7-1988 addressed to respondent 3 which reads that the cheque dated 10-6-1988 issued by the said society on Syndicate Bank has been returned due to technical reasons and requested respondent 3 to re-present the cheque again. Ex. R. 9 is a letter of Syndicate Bank dated 12-7-1988 addressed to respondent 3 stating that due to inadvertence cheque for Rs. 1,176/- was returned, therefore, the Bank requested

respondent 3 to re-present the cheque and it has also expressed its regret for the inconvenience caused to respondent 3. From this background this Court has to ascertain whether respondent 2 has committed any error in not honouring the cheque issued by him in favour of respondent 3 on 30-5-1988. I have also seen the evidence of R.Ws. 1 and 2. R.W. 2-Narayanappa, owner of the vehicle, has categorically stated that he has issued a cheque on 30-5-1988 in favour of respondent 3. While issuing a cheque he had sufficient cash with his banker viz., respondent 4. He has also produced pass-book to show that the cheque issued by him in favour of respondent 3 has been honoured and cleared from his banker viz., respondent 4. Ex. R. 7(a) is an entry to that effect. From this document it is clear that the cheque issued by respondent 2 in favour of respondent 3 on 30-5-1988 has been cleared by his banker viz., respondent-4.

9. From the (sic) records produced by the insurance company, it is clear that the cheque sent by respondent 3 for clearance has not been honoured by the collecting bank. It has also come in evidence that respondent 4 who is the banker of respondent 2 has also issued a cheque in favour of respondent 3 for Rs. 1,176/- in favour of M/s. Corporation Bank which is the banker of respondent 3. From these documents, it is clear that only the collecting banks have failed in discharging their duty. Therefore, for the mistake committed by the collecting banks, respondent 3 cannot cancel the policy issued in favour of respondent 2. But, the Tribunal, without considering the background of this case and without considering the fact that the cheque issued by respondent 2 was honoured as per Ex. R. 7 has held that as on the date of the accident policy was cancelled by respondent 3. In the instant case, accident occurred on 26-6-1988. As per Ex. R. 7(a) cheque was honoured by the banker of respondent 2 on 6-6-1988. In other words, cheque of respondent 2 was honoured 20 days prior to the date of accident. Therefore, in the circumstances, this Court is of the opinion that the Tribunal has committed an error in holding that the insurance company is not liable to indemnify respondent 2. If the mistake has been committed either by respondent 4-Raithara Seva Sahakara Sangha Niyamitha or by the Syndicate Bank of Yeshwanthpur, remedy of respondent 3 is only to proceed against the said bankers and not against respondent 2 in whose favour policy was issued. In view of the fact that the cheque issued by respondent 2 was honoured as per Ex. R. 7(a), this Court is of the opinion that the policy was in force even though respondent 3 has addressed a letter cancelling the policy issued in favour of respondent 2.

10. In the result, M.F.A. No. 2048 of 2001 is allowed and M.F.A. No. 4304 of 2000 is hereby dismissed by modifying the judgment and award of the Tribunal by holding that the compensation awarded by the Tribunal has to be satisfied by respondents 2 and 3 jointly and severally.

11. Learned Counsel for the appellants in M.F.A. No. 2048 of 2001 submits that at the time of filing the appeal he has deposited a sum of Rs. 25,000/- which amount has been withdrawn by the claimant and therefore requests this Court to

direct the insurance company to refund the said amount to them. It is needless to state that when the insurance company has to satisfy the entire award, appellants in M.F.A. No. 2048 of 2001 are entitled to claim Rs. 25,000/- from the insurance company with interest at 6% p.a.