

(2011) 06 KAR CK 0020
In the Karnataka High Court
Case No : MFA No. 6312 of 2005 (MV)

Mohammed Yusuf Bepari

APPELLANT

Vs

The Divisional Manager New India Assurance Co. Ltd. Kittur
Building, P.B. Road Dharwad

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 1 (b), 140, 146, 147, 149

Citation : (2013) ACJ 116

Hon'ble Judges : N. Kumar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : J.S. Shetty, for the Appellant; S.S. Koliwad, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the owner of the vehicle involved in the accident, whose claim for compensation has been rejected on the ground that claim petition filed by him u/s 166 of MV Act, 1988 was not maintainable. Petitioner is the owner of Maruti Van bearing registration No. KA-26/M-901. He has insured the said vehicle with the respondent who has issued the Insurance Policy. According to the claimant it is a comprehensive policy. Policy was in force as on 27.01.2004. The petitioner was driving the vehicle on 27.01.2004 on Dandeli-Haliyal Road. The vehicle met with an accident at a place called Karki. The petitioner sustained injuries. Therefore, he preferred a claim petition claiming a sum of Rs. 35, 20, 000/- in respect of the injuries sustained by him. Insurance Company is the sole respondent in the claim petition.

2. The respondent after service of notice entered appearance and filed detailed statement of objections. It is specifically contended that the petition u/s 166 of the MV Act, 1988 (hereinafter referred to as "Act") is not maintainable. Under the Act, the liability of the Insurance Company arise only if there is a liability foisted on the owner of the vehicle and Insurance Company is under the legal obligation to indemnify the owner against the claim, made against him in respect

of the motor vehicle accident. Therefore, the owner himself cannot put forth claim against the Insurance Company for the injuries sustained by him in a motor vehicle accident.

3. The Tribunal framed a preliminary issue which is as under:

Whether the petition as brought by the petitioner against respondent No. 1 is maintainable?

4. After hearing the learned advocates appearing for the parties, relying on the judgment of the Apex Court, the Tribunal held, in the absence of the liability of the owner, liability of the Insurer does not arise. The owner is not made a party to the claim petition. The liability to pay compensation arises only if the insurer incurs any liability in respect of the accident. In this case the claimant sustained injuries by his own vehicle insured in his own name. Therefore, he has not incurred any liability to pay compensation to any person. Therefore, question of payment of compensation to the claimant does not arise. Insurance Company is not liable. Therefore, it dismissed the petition.

5. Aggrieved by the said order the present appeal is filed.

6. Learned counsel for the appellant assailing the impugned order contends that Section 165 of MV Act provides for compensation in respect of the accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. Therefore, when the claimant has sustained injury arising out of use of a motor vehicle, he is entitled to maintain a petition and also entitled to compensation. The word "third party" arising is to be confined only to damages to any property. It is not attracted to accident involving the death or bodily injury to persons. Therefore, he submits interpretation placed by the Tribunal is erroneous and requires to be interfered with.

7. Per contra, learned counsel for the Insurance Company supported the impugned order.

8. Therefore the point that arises for our consideration in this appeal is:

Whether a owner of a vehicle can maintain a petition against the insurer of his vehicle for payment of compensation for injuries sustained by him in a motor vehicle accident, u/s 166 of the MV Act?

9. Chapter XI of the Act deals with Insurance of motor vehicles against third party. Therefore, statute requires only 3rd party risk to be covered under the Act. It does not deal with other than third party risk. Section 146 of the MV Act provides for necessity for insurance against third party risk. It makes obligatory on the part of owner of the motor vehicle to insure the vehicle against third party risk before the said vehicle is used or in other words, the motor vehicle is put on public road. Section 147 of the Act provides for requirements of policies and limits of liability. Sub Section 1(b) deals with the liability of the insurance company against the third party risk. Who are third parties who are entitled to a

sum claimed is also provided therein. Clause (b)(i) of sub-section (1) the liability in respect of death or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, is covered. In sub clause (ii) the liability against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in public place is covered. It also deals with the Insurance coverage to employees, driver of the vehicle, conductor of the vehicle. Sub section (2) deals with limits of such liability. In the entire Section 147 the risk or the liability of the owner of the vehicle is not covered.

10. Section 153 of the Act further makes it clear, for the purpose of Sections 150, 151 and 152 a reference to the liability to third party in relation to person insured under any policy of Insurance, shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance. Therefore, the entire chapter deals with the liability of the Insurance company to third parties only, however subject to the person who are covered u/s 147 statutorily. It is in this background we have to see the claim which can be adjudicated by the Tribunal constituted u/s 165 of the Act, which falls under chapter XII. The said section reads as under:

165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (Hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third part so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 140 1[and Section 163A].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A persons shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge 1[or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of

business among them.

11. The reading of this Section makes it clear that claims Tribunal constituted under the aforesaid provisions are vested with power to adjudicate upon-Claims for compensation in respect of accident involving.

(a) the death or bodily injury to persons arising out of use of motor vehicles; or

(b) Damages to any property, of a third party so arising, or both.

12. Therefore, it is clear when the accident happens it gives rise to three types of claims:

(a) Involving death of persons,

(b) Bodily injuries to persons

(c) Damages to any property.

Such consequences should arise out of the use of motor vehicle. Otherwise the Tribunal has no jurisdiction to entertain such claim. Secondly the claim should be of third party. The said third party may have a claim for either death or bodily injury or damage to the property or both. Therefore Section 166 provides for application for compensation and specifically it mentions that said application is to be confined to an accident of the nature specified in subsection (1) of Section 165. Therefore, both Sections 165 and 166 if read together, it is clear that claimant who satisfies two requirements, i.e., 1) he should be a third party, and 2) he should have suffered death or bodily injury or damages to the property, of which he is the owner would be entitled to make claim against Insurance Company. It is in this background, it is necessary to keep in mind Section 149 which reads as under:

149. Duty of insurer to satisfy judgments and awards against persons insured in respect of third party risks.- (1) If, after a certificate xxxxxxxx policy, the insurer shall, subject to this provision caused an application of the Insurance Company to pay to the person entitled 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 on that sum by virtue of any enactment relating to interest on judgment.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgement or award unless, before the commencement of the proceedings in which the judgement or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgement or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without sidecar being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion: or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

13. Therefore, this provision makes it clear that liability of the Insurance company is not a primary liability. The primary liability is that of the owner of the vehicle who has taken an insurance policy. In other words, the liability should be of the insured and claims should be preferred against the insured. If the claimant wants Insurance Company to pay him the compensation, he should make the Insurance Company, a party. No such claim against the insurer would lie if he is not made a party to the said proceedings. In such a proceeding, if a judgment or decree is passed holding that the insurer is liable to pay compensation to the claimant, then the insurance company steps into the shoes of the insurer as a judgment debtor and thus makes payment. Therefore, before an insurance company is made liable under the act the award should be against the owner. Then insurance company will step into his shoes as a judgment debtor and satisfy the award.

14. In this background, if we look into the case on hand the owner is the claimant who has filed a claim petition. As rightly pointed out by the Tribunal the petition is not filed against the owner. Therefore, when no decree could be passed against the owner, the question of insurance company being liable to satisfy the decree or award would not arise. In other words, the claim cannot be put forth against the insurance company independently. If owner is not made a party to the proceedings, the insurance company is not liable to pay the claim also.

15. The Supreme Court in the case reported in 2004 SAR(Civil) 882 has held as

under:

Section 147 does not require an insurance company to assume risk for death or bodily injury to owner of vehicle-Where insured i.e., owner of vehicle has no liability to a third party. Insurance Company also has no liability.

16. In that view of the matter. Tribunal is right in holding that the petition filed by the owner who is not a third party is not maintainable u/s 166 of the MV Act. We do not see any error committed by the Tribunal in dismissing the claim petition. It is not as if, a owner who has taken a comprehensive Insurance Policy is deprived of the benefit of claiming compensation. The basis for claiming compensation by the owner against the Insurance company would be contractual in nature. It is only a third party who has been given right to claim compensation statutorily. However, claimant would be at liberty to enforce the contractual liability in a proper forum and therefore the dismissal of claim petition would not come in the way of the owner of the vehicle enforcing his right, if any, under the insurance policy against the insurance company in proper forum. Hence, we pass the following order:

ORDER

Appeal is dismissed.