

(2002) 12 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2751 of 2001

Nagaraju

APPELLANT

Vs

A.R. Lingaraju and Another

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 16, 151

Citation : (2004) ACJ 242 : (2003) 2 KarLJ 651 : (2003) 1 KCCR 649

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : Anil V. Kulkarni, for the Appellant; N.S. Sanjay Gowda, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—This appeal is filed by the appellant/claimant requesting to fasten the liability on the second respondent-Insurance Company and also to enhance the amount of compensation awarded on 12-3-2001 in M.V.C. No. 431 of 1993 by the Motor Accidents Claims Tribunal at Mandya.

2. Regarding first ground, it is argued for the appellant-claimant that the Tribunal committed an error in not fastening liability with the Insurance Company. The learned Counsel for the Insurance Company now submits that the vehicle had the valid insurance coverage as on the date of accident. Still important questions namely, in spite of the fact that vehicle has insurance coverage, whether Insurance Company can plead before the Tribunal that vehicle had no insurance coverage and whether an adverse inference can be drawn against Insurance Company when it fails to produce record of insurance policy when called upon, more so, in the absence of participation in the proceedings by the owner of vehicle require to be answered.

3. Firstly, it may be noted that in para 16 of claim petition, claimant pleaded that the policy for the vehicle was issued by United India Insurance Company, Branch

Office, Finance House, II Floor, 19, Pattullecs Road, Madras-2. Further, in the cause title also, while showing name of respondent 2 as insurer, policy number with validity period from 1-10-1992 to 30-9-1993 had been specifically mentioned. In spite of said particulars, Insurance Company pleaded that the bus No. KA-11/923 is not insured with it by first respondent-owner and hence, it is not a necessary party to the petition and even if it is established that the first respondent is the owner of vehicle and the same is insured with it under policy, if any, given by it covering the risk as on the date of accident, its liability is only as per the terms and conditions of the policy and provisions of the Indian Motor Vehicles Act. With this pleading on record, the parties went for trial.

4. During enquiry before the Tribunal, when the claimant filed an application under Order 11, Rule 16 read with Section 151 of the CPC on 4-12-2000 supported by memorandum of facts, seeking a direction to the owner and Insurance Company to produce the policy referred to therein standing in the name of the first respondent in respect of mini tempo bearing No. KA-11/923, neither any objection was filed to it nor produced any record of insurance policy pertaining to said vehicle by any of them. There is no oral evidence so far as insurance policy is concerned. The Tribunal, relying on two decisions of this Court held that the claimant has failed to prove that the vehicle in question had a valid insurance policy as on the date of accident as even not produced police notice also.

5. The Tribunal had relied on the decision in the case of The Oriental Insurance Co. Ltd. Vs. N.S. Devaraja and Others, , wherein it is held that when the Insurance Company states in its objection statement that the vehicle was not insured, the burden of proving that the vehicle was insured, lay either on the claimant or owner of the vehicle. However, the facts, which are before this Court now, were not available in that case in that, the particulars of insurance policy with validity period, etc., were not available in that case. Apart from that, it may be noted that in the case on hand, column (16) of the claim petition was not specifically denied by the Insurance Company, though denied other columns specifically. It is true that in para 6 of its written statement, it has denied insurance coverage but, at the same time, it may be noted that when policy number was given by the claimant with validity period, it was necessary for the Insurance Company to come out with a specific plea that they (such particulars) do not pertain to that vehicle or, that they pertain to some other vehicle or, that even if they pertain to the vehicle, the policy insured does not cover the period of the accident and hence, it is not liable to pay compensation.

6. It need not be said that a vague denial cannot be taken as denial at all. If the claimant had not given the policy number with validity period and name of the Insurance Company with which the vehicle had been insured, the matter would have been different, but not now when such particulars were made available at the earliest point so as to enable the Insurance Company to come out with specific stand and not with a mere mechanical denial that too, with an alternative

plea that even if the vehicle is found insured, its liability is restricted as per the terms of policy and provisions of Indian Motor Vehicles Act.

7. The Tribunal had relied on the decision of this Court in the case of National Insurance Co., Ltd. Vs. Smt. Shantabai and Others, . However, in the said decision, the question involved was, in the absence of owner and driver of offending vehicle to produce driving licence in spite of calling such a record, whether or not a presumption can be drawn that driver had driving licence. In that case, particulars of driving licence, its validity period, type of driving licence, office, which insured it, etc., had not been furnished whereas, in the case on hand, the particulars of insurance policy, validity period, vehicle covered by the insurance policy, with which the vehicle was insured, etc., had been given, and as such, the said decision has no application to the present case.

8. It is true that in the case of The Oriental Insurance Co. Ltd. Vs. Chikkegowda and Others, , this Court has held that in cases where Insurance Company disputes its liability on the ground that the insurance particulars are not given, it is the duty of the claimant or the owner of the vehicle to furnish all its particulars to show that the vehicle was insured as on the relevant date and it is not for the Insurance Company to prove that the vehicle was not insured with them. However, the said decision applies only when particulars of policy are not given and not to a case, where particulars of policy are given by the claimant.

9. Above all, what is important in the present case is that the claimant had filed an application under Order 11, Rule 16 of the CPC seeking a direction to the respondents to produce policy record but, for the reasons best known to the Tribunal, the Tribunal has not passed any order either directing the respondents to produce the record of insurance or refusing such a direction sought for by the claimant. So also, it is not understandable as to why none of the respondents has filed any objection to the said application if, really, the record of insurance requested by the claimant was not available. Either the record of policy mentioned in the application could have been produced or a definite stand that such a record of policy is not available or even if available, it pertains to some other vehicle or period of accident does not come within the validity period of insurance coverage could have been taken by way of filing objections. So, silence on the part of the respondents in spite of calling the record of insurance cannot be ignored or taken lightly, more so, in the circumstances and clear pleadings of the parties. The Insurance Company is duty-bound to come up with a clear stand as to whether or not, the particulars of policy referred to in a claim petition pertain to the vehicle in question or not. To my mind, mere mechanical denial of the insurance of the vehicle with it, was not a sufficient denial in the eye of law, when required particulars had been furnished, more so, when application was also filed seeking direction to produce record of insurance policy. So, the Tribunal was not right in holding that no adverse inference could be drawn against the respondent 2 and its view in that regard is not sustainable in the eye of law.

10. Of course, the learned Counsel for the second respondent now submitted

that the vehicle in question had a valid insurance coverage as on the date of accident in question. It appears that for said reason, the Insurance Company did not specifically say anything with regard to the number of policy given in the claim petition with validity period. Be that as it may, it was necessary for the Insurance Company to have come up with said stand before the Tribunal itself to avoid dragging the parties to this Court. If the insurer had discharged its duty properly before the Tribunal, such a contingency of admitting insurance now would not have arisen. So, it is felt necessary to caution the Insurance Companies that they should not file their pleadings in a casual manner when particulars of insurance policy are given with validity period. It is impressed that whenever insurance particulars are furnished, they are bound to come up with a definite stand and not with a general denial with an alternative plea, as has been done in the case on hand before the Tribunal. However, having regard to the fact that now the second respondent-Insurance Company admits that the vehicle in question had valid insurance coverage as on the date of accident, it is not necessary to go in deep further, but it is expected at least in future that they will not come up with such vague pleas or general denial when particulars of insurance policy are given with validity period, etc. Now in the case on hand, the denial of the second respondent-Insurance Company is not taken as the specific denial of the plea of insurance put forward by the claimant and in the facts and circumstances besides material available on record, it is held that the vehicle in question had a valid insurance coverage as on the date of accident.

11. The next point relates to the amount of compensation. According to the claimant, the amount of compensation awarded is less. It is on record that the appellant/claimant sustained dislocation of left shoulder, fracture to two ribs and an injury to head. He was looked after by his wife and son in the hospital and firstly, he was taken to hospital in K.R. Pet and then to K.R. Hospital at Mysore, where he was treated as in-patient from 18-3-1993 to 30-3-1993 as per Ex. P. 3 for a period of 13 days. He was aged about 45 years carrying business in "kobri" earning Rs. 2,000/- per month, but not able to carry on that business after the accident and he gets pain in left chest portion, shoulder, besides headache. According to Doctor, examined as P.W. 2, movement of left shoulder joint is limited to 30 degrees, the grip in the left hand is slightly weak, excursion of respiration is reduced and it may be difficult for the appellant-claimant to carry out agriculture work and hard labour.

12. The Tribunal, based on said evidence, taking earning at Rs. 1,000/-per month and 30% disability, applied "11" multiplier and after deducting 1/3rd in the earning calculated above, assessed and awarded Rs. 26,413/-towards disability, Rs. 15,000/- towards pain and suffering, Rs. 10,000/-towards medical treatment (including bills for a sum of Rs. 738.15 as per Ex. P. 5), Rs. 2,600/- towards in-patient expenditure at Rs. 2007/- per day and Rs. 3007/- towards transportation and thus, totally awarded a sum of Rs. 57,013/- as compensation with interest at 9% per annum.

13. At the outset, it may be noted that the appellant has not produced any document to show his income at Rs. 2,000/- per month or, that he carried on the business in "kobri" nor any other record nor adduced any other evidence in support of his self-serving statement. On the other hand, medical record and summary sheet at Ex. P. 7 got produced by him shows his occupation as coolie and income of Rs. 300/- per month. However, the Tribunal has not considered the said unchallenged record and proceeded to hold that the claimant can be said to be earning Rs. 1,000/- per month. At this juncture, reference can be had to the decisions in the cases of United India Insurance Company Limited Vs. D.C. Rajanna and Another, and Subashchand Jain Vs. Ganapathi and Another, wherein this Court has held that the compensation for loss of future earning can be awarded in case where it is shown that the claimant has in fact suffered such a loss and not otherwise and in the absence of specific evidence, compensation for loss of future income cannot be granted. In the case on hand, there is no such convincing specific evidence regarding loss of income in future. In fact, the Tribunal has also not awarded compensation under that head, but it has awarded compensation under the head of disability, which appears to be on higher side. However, having regard to the fact that compensation of Rs. 15,000/- has been awarded towards pain and suffering, said amount does not require to be disturbed, more so, when there is medical evidence to the effect that the claimant's two more ribs had fracture, though no corroborated by medical record at Ex. P. 7. Similarly, a sum of Rs. 10,000/- awarded towards medical treatment (including the bills are for Rs. 738.15) is certainly on higher side because a sum of Rs. 2,600/- has been awarded separately towards in-patient expenditure at Rs. 200/- per day for 13 days and a further sum of Rs. 3,000/- has been awarded towards transportation, though there is no such specific evidence or record about it. However, as the Tribunal has not awarded any compensation towards loss of income during treatment period and also towards loss of amenities in future, the said compensation do not require to be disturbed. On the other hand, in the facts of the case, it would be just and reasonable to enhance the compensation making total compensation at Rs. 60,000/-. No other point has remained for consideration.

In the result, the appeal is allowed in part with cost modifying the impugned award holding that the appellant/claimant is entitled to a sum of Rs. 60,000/- (as against Rs. 57,013/- awarded by the Tribunal) from both the respondents jointly and severally with an interest at 9% per annum, but the second respondent-Insurance Company is directed to pay or deposit the said amount within a period of 45 days from today.

Fee of Advocate is fixed at Rs. 500/-.