

(2002) 10 KAR CK 0041

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2871 of 2001

National Insurance Co. Limited

APPELLANT

Vs

Mohammed and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151

Citation : (2003) 1 KCCR 284

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

Bench : Single Bench

Advocate : S. Srishaila, for the Appellant; K.M. Nataraj, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—The first Respondent had filed a claim petition before the claims Tribunal claiming compensation of Rs. 2 lakhs stating that on 4.2.1995 at about 10.30 a.m. when he was traveling from Puttur town to his house at Nehru Nagar in Auto rickshaw bearing No. CNO 8939 belonging to the second Respondent and insured with the present Appellant, the third Respondent-driver of said Auto rickshaw drove it in a rash and negligent manner and dashed against a scooter coming from opposite direction and turned to road side resulting in accident causing injuries, including fractures to him and hence, he suffered on account of that and entitled to compensation. The second Respondent-owner and third Respondent-driver of the said vehicle, though appeared before the Tribunal, did not file any written statement. Written statement/objections have been filed by the Appellant-insurer only denying its liability to indemnify the second Respondent. However, after trial, the Tribunal allowed the said claim in part and awarded compensation of Rs. 47,600/- with cost and interest at 9% per annum. Aggrieved by it, the Appellant-Insurance Company has filed present appeal.

2. It is the case of Appellant-Insurance Company that the insurance coverage for the said vehicle was commencing from 2.15 p.m. of 4.2.1995 and as such, the

said vehicle had no insurance coverage at the time of accident and consequently, it is not liable to pay compensation, but said facts have not been properly appreciated by the Tribunal inspite of the stand taken by the Appellant with regard to its liability,. though not specific with reference to said time, and now filed application under Order XLI, Rule 27 read with Section 151 CPC seeking permission to produce copy of insurance policy as additional evidence for the reasons mentioned in affidavits as it was not filed earlier and hence, in the circumstances, the impugned award requires to be set aside and at any rate, the matter requires to be remitted to the Tribunal.

3. Since the Respondents-2 and 3 are absent and unrepresented, though served with notices of said I.A.II and appeal, heard the learned Counsel for the Appellant and first Respondent only perused the record.

4. It may be noted in the present case that, at no stage, the Appellant-Insurance Company admitted its liability nor, insurance coverage for the vehicle in question. In fact, in the written statement/objections filed by the Appellant-Insurance Company, it has stated that the validity date and insurance particulars are not given and as inspite of repeated reminders, the claimant and owner of the vehicle have not come forward to furnish the said particulars, it has no knowledge with regard to insurance coverage of the said vehicle and hence, denied its liability to indemnify the owner. Not only that, during trial/enquiry before the Tribunal, neither the claimant examined as PW-1 has stated that the vehicle in question had the insurance policy issued by the Appellant-Insurance Company nor any material was produced to show that, in fact, the said vehicle in question had insurance coverage as on the date and time of accident in question. Except the claimant, no other person has been examined before the Tribunal. Admittedly, insurance policy was not produced before the Tribunal. Inspite of said material on record, without considering as to how the Insurance Company can be fastened with the liability to indemnify the owner of the vehicle, the Tribunal has held that the Appellant-Insurance Company is liable to indemnify the owner of the vehicle.

5. It need not be said, without there being any evidence or/admission of the fact that the vehicle involved had insurance coverage as on the date and time of accident in question, merely on the basis of some particulars furnished in the claim petition, the Tribunal was not right in holding the Appellant-Insurance Company liable to pay compensation. In fact, the Tribunal has not diverted to the said fact nor considered it with reference to pleadings and/or evidence available on record. it is true that the Appellant-Insurance Company has not produced insurance policy record of the said vehicle. At the same time, it cannot be forgotten that inspite of calling the particulars and validity period of the insurance policy, the owner or claimant had not furnished the same, as made clear in the written statement at the earliest opportunity. When not shown the period of the validity of the insurance policy or the period for which the insurance is covered, giving some numbers cannot be taken to hold that the particulars

furnished were/are sufficient. At any rate, it was necessary for the claimant to say at least on oath that the vehicle in question had the insurance coverage as on the date and time of the accident in question, but that was also not done.

6. Of course, the Appellant-Insurance Company could have produced the insurance policy record based on the number of the insurance policy given, but it has not done. However, for that, the Appellant has given reasons and now it has come forward with an I.A. seeking permission to produce record of policy of insurance as additional evidence. Said I.A.II filed is supported by the affidavit of Administrative Officer of its Regional Office besides the affidavit of learned Counsel, who represented it before the Tribunal.

7. It is stated in the affidavit of the Administrative Officer that the matter before the Tribunal was earlier entrusted to Sri. Padival, Advocate at Puttur and a Copy of insurance policy was also sent to him, but the said Advocate died on 2.10.1996 during the pendency of the proceedings before the Tribunal and as such, the matter was entrusted to another Advocate Sri K. Satish Prabhu at Puttur and accordingly, that other Advocate collected case papers from the office of Sri. Padival, Advocate and as such, the Insurance Company was under a bonafide impression and belief that the insurance policy has been produced before the Tribunal by the previous Advocate, but it was only on receipt of the certified copy of the impugned judgment and award, it learnt that the copy of insurance policy, sent by the Insurance Company has not been produced before the Tribunal, and its learned Counsel Sri. Satish Prabhu informed that he had not received the copy of insurance policy from the office of Sri. padival, Advocate and to that effect, his affidavit is also filed. So, in the said circumstances, pleading that, inspite of due diligence copy of insurance policy could not be produced before the Tribunal, sought permission to produce copy of insurance policy as additional evidence, failing which the Insurance Company will suffer a lot and great injury will be caused to it.

8. In his affidavit, Sri.K. Sathish Prabhu, Advocate has also stated that after the death of Sri, Padival, Advocate at Puttur, when he was entrusted with the said matter before the Tribunal, he has not received policy copy from the office of Sri. padival, though received other papers and hence, he could not produce it before the Tribunal. Apart from said affidavits, record of death of Sr. Padival, Advocate showing his death on 2.10.1996, is also filed.

9. It is the specific case of the Appellant-Insurance Company that insurance for the vehicle was taken just immediately after the accident on the date of accident only and by producing the insurance policy record, it wants to substantiate the same. The learned Counsel for the Appellant has placed reliance on an unreported decision of this Court in the case of United India Insurance Co. Limited v. Lakshamma and Ors. decided on 13.6.2001 (M.F.A. No. 3677/1996 (MVC) in which, in somewhat similar circumstances, permission was given to produce insurance policy record as additional evidence.

10. At the stage, it may be noted that the facts stated on oath in the affidavits filed in support of I.A. have remained uncontroverted. In fact, objections have not been filed to the said I.A. The death of Sri. Padival, Advocate, who was appearing for the Appellant before the Tribunal, cannot be disputed in view of the record of his death produced before this Court. Admittedly, as on that date, the proceedings were pending before the Tribunal and thereafter case papers were taken by Sri.K. Sathish Prabhu, Advocate, who has sworn to the fact that when he received case papers from the office of Sri Padival, Advocate, he did not receive any record or insurance policy along with case papers. Further, no malafides or negligence or carelessness can be attributed to the Appellant-Insurance Company in the matter for not producing the insurance policy record before the Tribunal. So, in the circumstances, the reason given for non-production of insurance policy record can be accepted.

11. At this juncture, it may be noted that in the case of K. Venkataramiah Vs. A. Seetharama Reddy and Others, , the Supreme Court has held as under:

16....Apart from this, it is well to remember that the appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the Court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under Rule 27(1)(b) of the Code. (underlined by me)

In the said case, the Supreme Court has referred the decision in the case of AIR 1931 143 (Privy Council) wherein it is held as under:

It may required to enable the Court to pronounce judgment, or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but "when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.

12. In the present matter also, by permitting the Appellant to produce record of insurance policy, Court can pronounce its judgment in a more satisfactory manner as inherent lacuna now available in the evidence will disappear. If the Appellant produces the record of insurance policy, which was said to have been taken from 2.15 p.m. on 4.2.1995, it goes to the root of the liability of the Insurance Company as the accident was earlier to that at 10.30 a.m., because, a Full Bench of this Court has held in the case of Krishna Subbarao Naik and another Vs. Palani Swamy and others, , that policy can be deemed to have commenced only from the time and date when it was actually obtained.

13. So, in the facts and circumstances of this case and as held by this Court in the case of United India Insurance Company Limited, (supra), I.A.II filed by the Appellant-Insurance Company can be allowed in the interest of justice so as to enable the Appellant to produce record of insurance policy as additional evidence, but on cost to the claimant. Consequently, the impugned judgment and award have to be set aside and the matter requires to be remitted to the Tribunal.

In the result, I.A.II and appeal are allowed on payment of cost of Rs. 1,000/- to the claimant or deposit on or before the 1st date of hearing fixed by the Tribunal after receipt of records from this Court. The judgment and award are set aside and the case is remitted to the M.A.C.T., at Puttur, Dakshina Kannada District for fresh disposal within a period of two months from the date of receipt of records and copy of this Order, after permitting the Appellant to produce the record of insurance policy in question in evidence and if necessary, to permit the Appellant to amend the written statement, but liberty is also reserved with the second Respondent-owner of the said vehicle to show that the policy in question was in force at the time of ac