(2014) 08 KAR CK 0065

In the Karnataka High Court

Case No : M.F.A. No. 9206/2008 (MV)

National Insurance Co. Ltd. APPELLANT

Vs

Jaffer RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2)(ii), 166, 181, 3

Citation : (2014) 08 KAR CK 0065

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, Advocate for the Appellant; C.B. MINAJAGI, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Aravind Kumar, J.—Heard Sri. A.N. Krishna Swamy, learned counsel appearing for appellant. Perused the records.

2. It is the contention of Sri. A.N. Krishna Swamy, learned counsel appearing for appellant that Tribunal committed a serious error in directing the insurer to pay compensation awarded by it and recover the same from owner, when undisputedly there is no liability on the insurer since the driver of the offending vehicle did not possess a valid and effective driving licence on the date of the accident as held by Tribunal itself and as such question of indemnifying by insurer by paying compensation to claimant and recovering the same from the insured does not arise. Hence, he prays for absolving the insurer from liability by allowing the appeal.

3. Order sheet of this appeal would indicate that matter had been listed for final disposal after being admitted on 09.12.2013 on number of dates. Infact this court had heard the learned counsel appearing for appellant on 14.08.2014 and ordered the matter to be listed for dictating Judgment on 18.08.2014. On the said date learned counsel appearing for respondent No. 1 sought for

adjournment and at request it was ordered to be listed on 19.08.2014. Though matter was listed on 19.08.2014 Judgment could not be dictated for want of time. Hence it has been listed today.

4. Parties are referred to as per their rank in Tribunal. Facts in brief leading to filing of this appeal can be crystalised as under:

Claimant one Sri. Jaffer filed a claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 5,00,000/- for injuries sustained in a road traffic accident that occurred on 01.09.2006 contending inter alia that on account of injuries sustained in the road traffic accident he is permanently disabled. As such he sought for payment of compensation of Rs. 5,00,000/-. Insured namely owner of the offending vehicle remained exparte, though served with summons. Insurer of the offending vehicle appeared and filed statement of objections denying the averments made in the claim petition and specifically raising a plea that driver of the offending vehicle did not possess a valid and effective driving licence to drive the vehicle.

5. Tribunal after considering the contentions and while answering as to who has to indemnify the claim at paragraph 11 of Judgment has held as under:

"11. RW-1 who is the official-witness of the Insurance Company has stated that the rider of the TVS Victor No. KA-04-EP 7649 was not having valid driving license. In support of his version he has produced the charges sheet as per Ex. R2 which discloses that TVS rider had no driving licence and accordingly Section 3 R/w. 181 of IMV Act is mentioned Therefore, Insurance Company respondent No. 1 is not liable to pay the compensation. Insurance Company shall pay the compensation initially later on recover the same from the owner of the vehicle".

(Emphasis supplied by me)

6. As noticed herein above Tribunal has categorically held that Exhibit R-2 namely charge sheet filed against driver of TVS Victor bearing Registration No. KA-04-EP7649 would indicate that driver of the offending vehicle did not possess driving licence and as such investigating authorities have filed charge sheet against him Tinder section 3 read with section 181 of Indian Motor Vehicles Act. It is also held by the tribunal that insurance company is not liable to pay the compensation. Having held so it has directed the insurer to indemnify the claim and recover the same from insured.

7. Division Bench of this court in the case of The Oriental Insurance Co., Ltd., Vs. Sri K.C. Subramanyam and Sri J.M. Nagaraj has held that when a valid defence raised by insurer u/s 149(2)(ii) contending that driver of offending vehicle did not possess valid and effective licence to drive the vehicle, question of directing the insurer to pay the compensation and recover the same from the insured would not arise. It has been held by Division Bench as under:

"82 (e) The condition precedent for application of the rule ''pay and recover'' is, there should be a valid policy of insurance and there is no breach of the terms and conditions of the policy. The dispute is regarding the nature and quantum of liability to be satisfied. If the contract restricts the liability to a particular sum, when the Statute provides for payment of a higher sum, then the liability is not in dispute. It is the quantum, which is in dispute. Therefore, the Legislature advisedly expressed this principle of pay and recover in Sub-Sections (4) and (5) of Section 149 and directed the insurer to pay the amount awarded or decreed and recover the excess amount from the insured. In other words, this principle of pay and recover applies to cases, which fall under Sub-Section (4) and (5) of Section 149 only".

8. Keeping the contours laid down by Division Bench, when the facts on hand are examined, it is to be noticed at the cost of repetition that Tribunal at paragraph 11 has clearly held that insurance company is not liable to pay compensation on account of driver of the offending vehicle not possessing a valid and effective driving licence. As per Exhibit P-2 driver of the offending vehicle has been charge sheeted by jurisdictional police u/s 3 read with section 181 of Indian Motor Vehicles Act. When a finding has been recorded by the Tribunal that insurance company is not liable to pay the compensation it could not have directed the insurer to indemnify the claim and then recover the compensation amount from the owner of the vehicle. Said order insofar as fastening the liability on the insurance company cannot be sustained and it is liable to be set aside. Hence, I proceed to pass following:

ORDER

1. Appeal is hereby allowed in part.

2. Judgment and award passed by MACT, Bangalore dated 06.03.2008 in MVC 6902/2006 insofar as directing the insurer-appellant to pay the compensation awarded and recover the same from the owner of the vehicle is concerned is hereby set aside. However, claimants would be entitled to recover the compensation amount awarded by tribunal with interest from the owner of the offending vehicle.

3. Amount in deposit is ordered to be refunded to the appellant on proper identification.