(2013) 10 KAR CK 0266

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8330 of 2009 (MV)

National Insurance Co. Ltd. APPELLANT

Vs

K.M. Ramanna,. Gousepeer and B.K. Pyarejan RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 KAR CK 0266

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

Bench : Single Bench

Advocate : A.N. Krishna Swamy, for the Appellant;

Final Decision : Partly Allowed

Judgement

B.S. Indrakala, J.—The above appeal is preferred challenging the judgment and award dated 18.7.2009 passed in MVC 24/2008 on the file of the Civil Judge (Sr. Dvn.) & Addl. MACT, Arasikere by the respondent/insurer contending that the vehicle involved in the accident was not at all covered with any policy as on the date of the accident, but, the liability is fastened on the appellant to indemnify the owner of the vehicle which is not proper. As the owner as well as the driver were placed ex-parte before the tribunal, service of notice to them was dispensed with vide order dated 24.6.2013 while respondent no. 1 - the injured/ claimant was notified by substituted service viz., by way of paper publication despite which he also remained unrepresented.

2. Though the above appeal is posted for admission, considering the said situation where all the three respondents are not represented and as the matter to be decided is only with regard to the liability of the appellant to indemnify the owner of the vehicle in the absence of any policy, the appeal is taken up for final disposal as requested by the counsel for appellant.

3. Learned counsel appearing for the appellant submitted that the said vehicle was a matador van bearing Regn. No. AP-02-1157 said to have belonged to the 3rd respondent herein and the same was never insured with the appellant: In the

circumstance, even in the statement of objections filed the said fact was pleaded, despite which, the tribunal without considering the same has fastened the liability on the appellant to indemnifying the owner of the vehicle for Rs. 21,000/- with interest @ 6% p.a. from the date of petition till realisation which is not proper.

4. The counsel for the appellant further submitted that Ex. P. 2 is the police note issued to the claimant, furnishing the particulars of the owner, driver and the issue of policy with regard to the vehicle which is involved in the accident. Further, he submits that on perusal of such Ex. P. 2, it is seen that what is mentioned about the insurance is the cover note of National Insurance Company Limited, Hassan by giving the same as the cover note no. 947322 dated 13.6.2003 and it is not the policy. Further, he submits that the validity of the cover note is only for a period of 60 days and the same expired on 13.8.2003 whereas the alleged accident occurred on 7.10.2003. Further he submitted that in pursuance of the cover note, the owner of the vehicle has not chosen to get any policy to the said vehicle; in the circumstance, the appellant/insurer is not liable to indemnify the owner merely on the basis of such cover note as furnished in Ex. P. 2. On perusal of the impugned judgment it is seen that at paragraph 12, the tribunal has deemed it fit to discuss with regard to the details of such issuance of cover note and also the date as mentioned in the cover note as the date of the policy which is disproved by the insurance company by examining RW1. However, without assigning any reasons the tribunal has jumped to the conclusion that the vehicle was insured with the appellant as on the date of the accident, which is not proper. In the foregoing circumstances, when the appellant has specifically adduced evidence to show that the vehicle was not insured and the cover note was not valid as on the date of the accident, the finding given by the tribunal fixing the liability on the appellant to indemnify the owner is not proper. Hence the following:

ORDER

The above appeal is partly allowed exonerating the appellant/insurance company from indemnifying the owner of the vehicle and the amount awarded by the tribunal shall be satisfied only by the owner. The amount in deposit is ordered to be refunded to the appellant.