
(1998) 03 KAR CK 0098
In the Karnataka High Court
Case No : M.F.A. No. 1570 of 1994

National Insurance Co. Ltd.

APPELLANT

Vs

Subramanya and Others

RESPONDENT

Date of Decision : 26-03-1998

Acts Referred:

Citation : (2000) ACJ 1171

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : M.U. Poonacha, for the Appellant; S.N. Keshavamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Chidananda Ullal, J.—This appeal is directed against the judgment and award dated 13.4.1994 in MVC No. 156 of 1990 passed by the District Judge and Motor Accidents Claims Tribunal, Chikmangalur (henceforth in brief as "MACT"). The appeal is filed by the insurance company to challenge the finding of the MACT that the appellant insurance company is also liable to pay compensation to the respondent Nos. 3 and 4, claimants.

2. I heard the learned counsel for the appellant insurance company, Mr. M.U. Poonacha and the learned counsel for the respondent Nos. 3 and 4, claimants, Mr. S.N. Keshavamurthy. The respondent No. 1, driver and the respondent No. 2, owner, having been served with notices of the appeal had remained absent before this court. I have also perused the case records.

3. The short point for my consideration in this appeal is whether the justification on the part of the MACT to fasten the liability on the appellant insurance company is there or not.

4. The learned counsel for the appellant insurance company, Mr. Poonacha argued that in view of the evidence both oral and documentary adduced by the appellant insurance company before the MACT, it would not have fastened the

liability on the insurance company. It is also his argument that when the respondent No. 1, driver and the respondent No. 2, owner had remained absent before the MACT, the appellant insurance company had produced the possible best evidence available with it in producing claim form preferred by the respondent No. 2, insured, Exh. D-1, copy of an application by the respondent No. 2, Exh. D-2, copy of the insurance policy, Exh. D-3 and further copy of the transfer endorsement, Exh. D-4. It is further argued by him that in Exh. D-1, it had been clearly stated at Sl. No. 10 as to the particularities of the driver, licence number and date of expiry shown therein had been as "not" (since written as "no") and that even in Exh. D-2, letter it had been stated therein that the respondent No. 1, driver had no driving licence. Therefore, his submission is that the MACT would not have disbelieved the said documents to fasten the liability on the appellant insurance company also for, according to him, the said papers were received by the insurance company in the ordinary course of its business and the same had been received as long back as on 9.7.1990. Hence, he prayed that the impugned judgment and award passed by the MACT in so far as the same related to the fastening of the liability on the appellant insurance company be set aside.

5. Per contra, the learned counsel appearing for the respondent Nos. 3 and 4, claimants, Mr. Keshavamurthy argued that the MACT below had rightly rejected both oral and documentary evidence produced by the appellant insurance company, firstly, for the reason that the signature in Exh. D-1 as at Exh. D-1 (a) and in Exh. D-2 as at Exh. D-2 (a) did not tally with one another and secondly, that both Exh. D-1 and Exh. D-2 did not affix the signature thereon in the presence of the Divisional Manager, RW 1. It is also argued by Mr. Keshavamurthy that if the respondent No. 1, driver, had no driving licence at the relevant point of time, the burden was cast upon it to produce admissible evidence to demonstrate that the driver had no driving licence and thus the appellant insurance company be absolved of the liability. Yet another point canvassed before me by Mr. Keshavamurthy is that the jurisdictional police had not prosecuted the driver for driving the vehicle without having valid licence to drive the vehicle at the point of time of the accident. He, therefore, prayed that the instant appeal be dismissed.

6. In filing detailed objection statement, as I see para 4 therein, the appellant insurance company had contended that the owner, respondent No. 2, was guilty of allowing the respondent No. 1, driver to drive the vehicle without there being valid licence and thus he committed breach of terms and conditions of policy, Exh. D-3, issued by it in favour of the owner, respondent No. 2, but when it was turn of adducing evidence, it appears to me that the appellant insurance company could not produce any document other than Exh. R-1, claim form and Exh. R-2, letter purported to have been written by the respondent No. 2. It has to be observed here that the case of the appellant insurance company is that the claim form, Exh. R-1 and letter, Exh. R-2 were received by it in the normal course of business and they are thus found in the claim docket maintained by it. If it is

true that Exhs. R-1 and R-2 were received by the insurance company in the normal course of business, it appears to me that they would have definitely bore office seal and the date of receipt thereon. But I do not find the same in Exh. R-1 and Exh. R-2, furthermore, it was not even registered in the inward register of the appellant insurance company at all. This assumes significance when the MACT had also found that the signatures in Exhs. R-1 and R-2 vary and do not tally with one and Anr.

7. In the said circumstances, it appears to me that the MACT had no go than fastening the liability also on the appellant insurance company, particularly when it had not discharged the burden of proving that the respondent No. 1, driver, had no valid driving licence at the point of time of accident. The learned counsel for the appellant insurance company was at pains to convince me that it was quite difficult a proposition to prove that the driver was not having a driving licence, particularly when the driver as well as the owner remained absent before the MACT. I do appreciate the predicament of the insurance company but nevertheless that cannot be the reason for absolving the liability of the appellant insurance company. At best the insurance company may be having an action against the respondent No. 2, owner and that it can do in the second round after satisfying the judgment and award passed by the MACT, of course subject to the availability of such an action as against the respondent No. 2, owner as per the insurance law. Hence, I do not find any merit in the instant appeal.

8. In the result, I am to dismiss the instant appeal. No costs.

The appellant insurance company is, therefore, directed to deposit the sum awarded by the MACT within a period of 8 weeks from this day before the MACT after giving deduction for any amount deposited either before this court, or before the MACT.

The registry is also directed to transfer any sum deposited in the appeal before this court to the MACT below at the earliest.