

(2002) 04 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 762, 763 and 764 of 2000

National Insurance Company Limited

APPELLANT

Vs

Vasu N. and Another

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2) (a), 149 (4)

Citation : (2003) ACJ 946 : (2002) ILR (Kar) 2711 : (2002) 5 KarLJ 290 : (2002) 3 KCCR 1715

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : A.N. Krishnaswamy, for the Appellant; S. Vishwajith Shetty, for Respondent 1 in M.F.A. No. 762 of 2000, Kirankumar, for Respondents 1 to 4 in M.F.A. No. 763 of 2000 and J.M. D'Cunha, for Respondent 2 in M.F.A. Nos. 762 and 764 of 2000 and for Respondent 5 in M.F.A. No. 763 of 2000, for the Respondent

Judgement

V.G. Sabhahit, J.—These three appeals arise out of the common judgment and separate award passed in M.V.C. Nos. 348 to 350 of 1992, dated 29-10-1999 passed by MACT, Dakshina Kannada, Mangalore.

2. The essential facts of the case necessary for disposal of these appeals are as follows:

The Tribunal by order dated 29-10-1999 has disposed off the claim petitions filed in M.V.C. Nos. 348 to 350 of 1992 by awarding compensation of Rs. 19,265/-, 1,24,700/- and Rs. 16,400/- by holding that the accident occurred due to rash and negligent driving of the lorry bearing No. CTX 9556 belonging to the first respondent. It was contended by the Insurance Company that the driver of the said lorry did not hold an effective driving licence to drive the lorry on the date of accident (11-1-1992). The said contention was negated by the Tribunal in its judgment and the Tribunal held that respondents 1 and 2, owner and insurer are jointly and severally liable to pay the compensation in all the petitions and

accordingly, passed the award.

3. Being aggrieved by the said judgment and award insofar as it states about the liability of the Insurance Company also by holding that the driver of the lorry did hold a valid driving licence on the date of accident, the Insurance Company has preferred these appeals contending that it is not liable to pay the compensation as ordered by the Tribunal and the compensation awarded to the petitioners has to be paid by the owner only as the driver of the offending lorry did not have a valid driving licence on the date of accident.

4. I have heard the learned Counsel appearing for the Insurance Company-the appellant in all the appeals and the learned Counsels appealing for the respondents.

5. Having regard to the contentions urged, the points that arise for determination in these appeals are:

(1) Whether the Tribunal was justified in holding that the driver of the lorry did hold an effective driving licence to drive the lorry on the date of accident and wherefore the Insurance Company is also liable to pay the compensation awarded to the petitioners?

(2) Whether the judgment and award passed by the Tribunal which is impugned in these appeals calls for interference?

(3) What order?

and I answer the above points as follows:

Point No. (1): In the negative;

Point No. (2): In the affirmative;

Point No. (3): As per the final order for the following reasons:

6. It is the case of the Insurance Company as contended before the Tribunal that the driver of the offending lorry No. CTX 9556 did not hold an effective driving licence to drive the lorry on the date of accident (11-1-1992). In support of the said contention, the Insurance Company has produced the endorsement issued by the RTO as per Ex. D. 1 and has also examined the Assistant Administrative Officer. On behalf of the claimants, Ex. P. 23-Xerox copy of the licence of the person who was driving the lorry on the date of accident certified by the notary has been got marked. It is clear from the perusal of Ex. D. 1 that it is dated 17-12-1998 and according to the said endorsement, the licence was renewed upto 26-9-1990 and thereafter the driving licence has not been renewed. The witness examined on behalf of the Insurance Company has also deposed accordingly before the Tribunal. However, the Tribunal has held that the driver of the lorry did hold an effective driving licence on the date of accident dated 11-1-1992, Contrary to the contents of Ex. D. 1 on the ground that Ex. P. 23 shows that the driving licence had been renewed upto 20-6-1993 by

endorsement dated 25-10-1990. It is clear from the perusal of Ex. P. 23 that it is a Xerox copy which has been certified by the Notary and the original driving licence has not been produced before the Tribunal and the Tribunal has to consider the effect of the above said documents i.e., Xerox copy of the licence certified by the Notary as also the endorsement issued by the Competent Authority under the Motor Vehicles Act for issuing the licence as per Ex. D. 1. The Tribunal could not have brushed aside the contents of Ex. D. 1 and the evidence of D.W. 1 and relied upon the contents of Ex. P. 23, when it is a Xerox copy which had been certified by the Notary and wherefore, the finding of the Tribunal that the driver of the lorry was holding an effective driving licence on the date of accident on the basis of the above said material on record cannot at all be sustained as the same is not based upon the proper appreciation of the above said material on record in its right perspective and wherefore, the finding of the Tribunal that the driver of the lorry did not hold an effective driving licence on the date of accident is liable to be set aside and the matter is liable to be remitted to the Tribunal for fresh consideration of the question as to whether the Insurance Company has proved that the driver of the lorry did not hold an effective driving licence to drive the lorry on the date of accident (11-1-1992) so as to consider the liability of the Insurance Company to pay compensation awarded to the petitioner as the Insurance Company would be entitled to recover the compensation which is bound to pay to the petitioners who are the third parties from the owner as the payment is made only pursuant to the provisions of Motor Vehicles Act and the Insurance Company would get a right to recover the compensation paid to the petitioners in all the petitions from the owner if the Tribunal comes to the conclusion that the driver of the lorry did not hold an effective driving licence on the date of accident to drive the offending lorry CTX 9556. The Tribunal shall give an opportunity to the owner to adduce evidence to substantiate the contention that the driving licence had been renewed subsequent to 26-9-1990 as per Ex. P. 23.

7. In view of the finding on point No. (1), it is clear that the matter is liable to be remitted to the Tribunal to consider the question of liability of the respondents to pay the compensation to the petitioners. It is well-settled that the breach of conditions of the policy would be between the insurer and the insured and the third parties in whose favour an award is passed by the Tribunal would not be affected by the said breach of conditions of the policy. The Motor Vehicles Act has made it compulsory for the owner of the vehicles to obtain a policy to cover the risk in respect of third parties and object of introducing such a provision is not to make the business of the Insurance Company prosperous, but to provide security or assurance to the claimants that in case an award is passed in favour of the third parties, the same would not become infructuous for the inability of the claimants to recover compensation from the owner as he may not be financially sound. The Supreme Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., has held that, in view of the provision of Section 149(2)(a) and 149(4) of the Motor Vehicles Act, 1988, when the Insurance

Company pleads breach of policy on the ground that the driver did not hold a valid " driving licence on the date of accident, the third party should not be bothered by the said breach of conditions alleged by the Insurance Company and so far as the award passed in favour of third parties is concerned, the Insurance Company is liable to pay to the third parties irrespective of the fact that there has been any breach or violation of the policy conditions, but the Insurance Company can recover from the insurer the amount so paid to the third parties if as per the policy conditions the insurer has no liability to pay such sum. The Hon"ble Supreme Court has observed in para 22 of the judgment as follows:

"To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured".

8. In the said case, the Hon"ble Supreme Court directed the Insurance Company to pay the amount awarded to the claimants and has remitted the matter to the Claims Tribunal to decide the question whether the Insurance Company is entitled to recover that amount from the owner of the vehicle on account of breach of conditions of the policy. The principle laid down by the Hon"ble Supreme Court applies on all fours to the facts of the present case and wherefore, it must be held that the Insurance Company is liable to pay compensation awarded to the petitioners in M.V.C. Nos. 348 to 350 of 1992 and the finding of the Tribunal that the driver of the lorry did hold an effective driving licence on the date of accident is set aside in view of the finding on point No. (1) and the matter is remitted to the Tribunal to consider afresh the question as to whether the driver of the lorry did have an effective driving licence on the date of accident (11-1-1992) and as to whether there is any breach of conditions of the policy. An opportunity shall be afforded to the parties for adducing evidence in that regard and it is made clear that the claimants shall not be bothered during remaining part of the proceedings. If the Tribunal comes to the conclusion that the driver of the lorry did not hold an effective driving licence on the date of accident (11-1-1992), and there is breach of conditions of the policy and the Insurance Company is not liable to pay the compensation to indemnify the owner in view of the breach of conditions of the policy, it shall pass an award in favour of the Insurance Company in the same proceeding against the owner so as to enable the Insurance Company to recover the amount from the owner under the same award. Accordingly, I pass the following order:

The appeals, M.F.A. Nos. 762 to 764 of 2000 are allowed in part. The finding of the Tribunal on issue No. 5 as to whether the driver of the lorry CTX 9556 did hold a valid driving licence on the date of accident is set aside and the finding of the Tribunal regarding quantum of compensation awarded to the petitioners in

M.V.C. Nos. 348 to 350 of 1992 is confirmed. The appellant-Insurance Company shall deposit the compensation awarded to the petitioners in each of these cases as per the award passed by the Tribunal on 29-10-1999 and the matter is now remitted to the MACT, Dakshina Kannada, Mangalore for fresh consideration of the question as to whether the driver of the lorry did hold an effective driving licence on the date of accident and as to whether there is breach of conditions of the policy as alleged by the Insurance Company and as to whether the Insurance Company is liable to recover the amount from the owner. Opportunity shall be afforded to the Insurance Company and the owner of the vehicle to adduce evidence in that regard. If the Tribunal comes to the conclusion that there is breach of conditions of the policy and that the driver did not hold an effective driving licence on the date of accident, the Tribunal shall pass an award in favour of the Insurance Company against the owner in the same proceeding so as to enable the Insurance Company to execute the award against the owner. It is made clear that the claimants shall not be bothered during remaining part of the proceedings. The amount deposited by the appellant in all these appeals shall be transmitted to the Tribunal for disbursement to the claimants in accordance with the terms of the award.