

(2011) 03 KAR CK 0260

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 425 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

J. Krishna and Virupaksha Doddayachanahalli

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0260

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; V.N. Madhava Reddy, for R.1, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the insurer challenging the award made by the Tribunal on the ground of liability.

2. Heard the learned Counsel for the parties and perused the records.

3. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

4. Brief facts of the case as pleaded in the claim petition are:

That on 25-4-03, the claimant, being a mango merchant, engaged on contract basis a goods autorickshaw bearing registration No. KA-11-3775, belonging to first Respondent before the Tribunal and second Respondent in the appeal and while returning in the said autorickshaw along with the mango load to Balahattikuppe on Bevinakuppe - Balahattikuppe road, the driver of the autorickshaw drove the same in a rash and negligent manner and caused the accident. As a result, the claimant sustained injuries. Hence, he filed a claim petition before the MACT. Sri Rangapatna, seeking compensation of Rs. 8,80,000/-. The Tribunal by impugned judgment and award has awarded compensation of Rs. 1,76,640/- and directed the owner of the vehicle to pay compensation with interest at 6% p.a. from the date of claim petition till the date

of realisation to the claimant and absolve the second Respondent from liability, but directed the second Respondent to deposit the entire compensation amount with interest thereon in the office of the Tribunal, within 30 days from the date of judgment and recover the same from the first Respondent - owner.

5. There is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 25-2-04 due to rash and negligent driving of the offending autorickshaw by its driver, and therefore the only point that arises for my consideration in the appeal is:

Whether the Tribunal is justified in directing the insurer of offending vehicle to deposit the amount in the office of the Tribunal and then recover it from the owner of the auto-rickshaw?

6. The learned Counsel appearing for the insurer submits, the Tribunal having come to the conclusion that the claimant having travelled in the offending autorickshaw which is a goods vehicle as a gratuitous passenger in violation of the permit and the insurer is not liable to pay compensation to the claimant, has committed an error in directing the insurer to deposit the compensation amount before the Tribunal and then recover it from the owner of the offending autorickshaw, and therefore he prays for allowing the appeal by setting aside the award of the Tribunal in so far as direction to the insurer to deposit the compensation amount before the Tribunal.

7. Per contra, learned Counsel appearing for the claimant submits, there is no infirmity in the judgment and award of the Tribunal and he prays for dismissal of the appeal.

8. The claimant in support of his contention that he being a mango merchant engaged a goods auto on contract basis and on the date of accident, i.e. on 25-4-03, he was travelling in the offending auto along with the mangoes, did not lead any evidence establishing the same. On the contrary, Police records namely, FIR and spot mahazar produced at Ex. P-1 and P-2 respectively disclose, no mangoes were found in the offending auto at the time of accident. In fact, the Tribunal in para 12 of its judgment has held "no goods were found to be carried in the offending vehicle either by P.W. 1 or P.W. 2 at the time of accident" on the other hand it has held that the claimant had travelled in the offending goods Auto as a gratuitous passenger and question of fastening liability on the insurer of offending auto and directing them to pay compensation will not arise. Even in the operation portion of the judgment, it has directed the owner of the offending auto to pay compensation and absolved the insurer from liability to pay compensation. But it has committed an error in directing the insurer to deposit the compensation amount in the Office of the Tribunal.

9. The claimant has not filed any appeal challenging the finding of the Tribunal holding that the claimant had travelled in the offending goods auto as a passenger. That being so, Tribunal ought not to have directed the Appellant - insurer to deposit the compensation in the office of the Tribunal and then recover

it from the owner.

10. The owner of offending auto has not preferred any appeal challenging the award of the Tribunal holding claimant had travelled in the offending auto as passenger on the date of accident and quantum of compensation awarded.

11. Now, in view of exonerating the insurer from liability to pay compensation to the claimant, the liability has to be fastened against the owner directing him to pay compensation awarded by the Tribunal to the claimant.

12. Accordingly, the appeal is allowed. The judgment and award of the Tribunal is modified. The Appellant - insurer is exonerated from liability to pay compensation and direction issued by the Tribunal to the insurer to deposit the compensation in the Office of the Tribunal within one month from the date of awarded judgment is set aside. Rest of the award remains undisturbed. Owner is directed to pay compensation awarded by the Tribunal to the claimant and claimant is entitled to recover the same from the owner.

Amount in deposit is ordered to be refunded the Appellant - insurer.

No order as to costs.