

(2013) 03 KAR CK 0168
In the Karnataka High Court
Case No : M.F.A. No. 4283 of 2008 (MV)

New India Assurance Co. Ltd.

APPELLANT

Vs

Mr. Shiva Prasad and Y. Jayanth

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 177, 39, 40, 41(7)

Citation : (2014) 1 AKR 171 : (2013) ILR (Kar) 3311

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant;

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Insurer is in appeal questioning the correctness and legality of the Judgment and award passed by MACT, Bangalore in MVC 2576/2005 dated 29.12.2007 contending interalia that Tribunal ought not to have fastened the liability on the insurance company. Heard Sri. Jai Prakash, learned Counsel appearing for appellant-Insurance Company. Service of Notice on R-1 & R-2 has been held sufficient vide order dated 08.03.2013 and 21.08.2012 respectively.

2. Contention of Sri. Jai Prakash, learned counsel appearing for insurer can be crystalised as under:

(i) Validity of Policy issued to the offending vehicle is co-extensive with that of registration certificate issued in respect of said vehicle and on account of registration certificate of the offending vehicle not having been renewed or revalidated by jurisdictional Regional Transport Authority the liability of the insurer had ceased on the midnight of 15th year inasmuch as u/s 39 of the Motor Vehicles Act, 1988 no person would be entitled to drive a motor vehicle unless the vehicle is registered in accordance with Chapter IV of Motor Vehicles Act, 1988;

(ii) By operation of law namely sub-section (7) of Section 41 certificate of

registration issued by Regional Transport Authority would be valid for a period of 15 years and on completion of said period registration certificate issued in respect of such vehicle would cease to be in existence unless the registration certificate is renewed and in the instant case 15 years period had expired on 17.10.2001 and registration certificate of the offending vehicle having not been renewed appellant-Insurance company could not have been directed to indemnify the claim and as such it should be absolved of its liability by allowing the appeal and dismissing the claim petition filed against insurance company.

(iii) He would also elaborate his submission by contending that compensation awarded by-Tribunal is highly excessive and exorbitant and as such compensation awarded by the tribunal be substantially reduced and compensation be awarded in consonance with the injuries sustained and consequential disability suffered by the claimant.

3. Having heard the learned counsel appearing for appellant, I am of the considered view that following points would arise for my consideration.

(a) Whether appellant-Insurance Company is not liable to indemnify the claim on account of Registration Certificate issued to the offending vehicle not having been renewed after period of 15 years after its expiry?

(b) What Order?

BACKGROUND:

4. On account of a road traffic accident that occurred on 09.02.2005 at about 9.10 a.m while the claimant (a minor aged about 7 years) was walking in front of school gate situated at Mahalakshmi Layout, Bangalore, the rider of a Kinetic Honda driving said vehicle in a rash and negligent manner dashed against claimant which resulted in injuries being sustained by him. For treatment he was shifted to Eshwar Hospital, Mahalakshmi Layout, Bangalore and was treated at the said hospital. He was an inpatient in said hospital for about 6 days. He sought for compensation of Rs. 3,50,000/- by filing a claim petition u/s 166 of Motor Vehicle Act, 1988 before MACT, Bangalore. Respondent insurance company on service of notice appeared and filed its statement of objections by denying the averments made in claim petition. It was specifically contended by insurer at paragraph 7 that policy issued to the offending vehicle would cover third party risk and it will be in force till the validity of the registration of the vehicle in question existed and vehicle in question having been registered in the year 1986 and its validity having expired on 17.10.2001 and not being subsequently renewed though it was transferred to the name of first respondent in the year 1996, there was no valid registration certificate in existence issued by the jurisdictional Regional Transport Authority to the vehicle and as such insurer need not indemnify the claim. Other averments made in the claim petition also came to be denied and insurer sought for dismissal of the claim petition.

5. Father of the claimant got himself examined as PW-1 and produced 9

documents and got them marked as Exhibits P-1 to P-9. On behalf of respondent one official was examined as RW-1 and through him two documents were marked as Exhibits R-1 and R-2. On appreciation of evidence both oral and documentary tribunal allowed the claim petition in part and awarded a compensation of Rs. 70,000/-under the following heads:

Tribunal also held that insurer is liable to indemnify the claim.

6. Tribunal while considering issue No. 2 namely the amount of compensation if awarded is to be recovered from whom, has at paragraph 16 examined the plea of insurer and rejected the same on the ground that registration certificate issued by Regional Transport Authority was not cancelled and as such registration was held to be in force as on the date of accident and as such tribunal held insurer cannot be absolved of its liability.

RE: POINT NO.1

7. No person would be entitled to drive a Motor vehicle unless a valid certificate of registration is issued by the Regional Transport Authority, in view of section 39 of the Motor Vehicles Act, 1988. Same reads as under:

Section 39. Necessity for registration - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

8. Every owner of a motor vehicle is required to get the same registered by a registering authority u/s 40 of Motor Vehicles Act, 1988. Section 41 of Motor Vehicles Act deals with the mode, method, manner of registration of a motor vehicle including renewal, payment of late fee, providing for action u/s 177 and issuance of duplicate certificate of registration. The certificate of registration issued under sub-section (3) of Section 41 in respect of a Motor Vehicle, other than transport vehicle, would be valid for a period of 15 years from the date of issue of such certificate and shall be renewable, as provided under sub-section (7) of Section 41. Section 41 and relevant subsections necessary for the purposes of adjudicating the rival contentions are extracted herein below:

41. Registration, how to be made.--(1) An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government:

Provided xxx of this Act.

(2) xxxx

(3) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.

(4) xxx

(5) xxx

(6) xxx

(7) A certificate of registration issued under subsection (3), whether before or after the commencement of this Act, in respect of a motor vehicle, other than a transport vehicle, shall, subject to the provisions contained in this Act, be valid only for a period of fifteen years from the date of issue of such certificate and shall be renewable.

9. Perusal of above provisions of Motor Vehicles Act, 1988 would indicate that a motor vehicle cannot be driven in any public place or in any other place unless such vehicle is registered in accordance with Chapter IV of the Motor Vehicles Act, 1988 and the certificate of registration of the vehicle has not been suspended or cancelled. Sub-section (7) of Section 41 would indicate that when a certificate is issued under sub-section (3) of section 41 it would be valid only for a period of 15 years from the date of issue of such certificate. Sub-section (8) provides for renewal of certificate of registration. Sub-section (11) of section 41 casts an obligation on the owner of a vehicle to make an application under subsection (1) of section 41 or as the case may be namely for renewal under sub-section (8) of section 41 before the registering authority and the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him u/s 177 of the Motor Vehicles Act, such amount not exceeding Rs. 100/- as may be prescribed under sub-section (13) of section 41. Section 177 provides for punishment of offences for contravention of any of the provisions of the Act, Rule or Regulation or Notification issued thereunder. If no penalty is provided for the offence punishable for the first offence with fine it may extend to Rs. 100/- and for any second or subsequent offence the fine may extend upto Rs. 300/-. Sub-section (13) of Section 41 empowers the State Government to prescribe different amounts of fine to be paid having regard to the period of delay on the part of the owner in making an application either under sub-section (1) or (8) of section 41 as the case may be. Thus, a composite reading of sections 39, 41 and 177 of the Motor Vehicles Act and by harmonious reading of these three provisions it would clearly indicate that if an application is not filed on time, it can be subsequently filed and the authorities are empowered to collect from the owner an amount not exceeding Rs. 100/- which is prescribed under sub-section (13) in lieu of any action that may be taken against owner u/s 177. As such non-renewal of certificate of Registration can be construed as an irregularity which can be cured

by collection of amount depending upon the period of delay. Hence, such delay in filing an application for renewal will not amount to illegality.

10. Keeping this interpretation of statutory provisions in mind when facts on hand are examined it would indicate that offending vehicle in the instant case namely Kinetic Honda bearing registration No. CKI 5751 was manufactured in the year 1986 and it came to be registered before the jurisdictional Regional Transport Authority on 18.10.1986. Insurance policy as per Ex.R-1 was issued on 15.12.1992 at about 2.42 p.m in respect of said vehicle. The validity of the insurance was agreed to be co-extensive with the registration certificate of the vehicle being valid. In other words there was a contract between the owner and insurance company that insurance coverage to the said vehicle would be valid till registration of vehicle is valid or in other words as long as certificate of registration issued to the offending vehicle is valid, the policy of insurance issued to said vehicle would be valid.

11. In order to buttress his argument that insurance company is not liable to indemnify the claim on account of Registration Certificate having not been renewed as on date of accident Sri. Jai Prakash, learned counsel appearing for insurer has very heavily relied upon Exhibit R-2 which is a "B-Register Extract" issued under Rule 48 of the Karnataka Motor Vehicles Rules 1990 by Assistant Regional Transport Officer, Rajajinagar, Bangalore (West) in respect of offending vehicle. In Exhibit R-2 at column 23 a hand written sentence to the effect that "Registration Certificate not renewed" is found. This stray entry found in Exhibit R-2 requires to be examined with utmost circumspection for the following reasons:

- (1) Author of the said document has not been examined;
- (2) Original of the register has not been summoned; and
- (3) it is hand written.

Mere production and marking of a document would not prove the contents of it. Insurer having raised a defence that registration certificate issued by authorities to the offending vehicle was not valid as on date of accident and as such the insurance policy issued as per Exhibit R-1 being co-extensive with that of validity of registration certificate had virtually invited the tribunal to cast the burden on the insurer. In other words burden was heavily cast on the insurer to prove this fact. As noticed herein above except producing certified extract of "B-Register" as per Ex.R.2 which contains a stray sentence as extracted herein above which is hand written no other evidence was placed by insurer and as such the acceptability of its authenticity would be doubtful. Until and unless such cloud or suspicion surrounding it is removed validity of Exhibit R-2 cannot be accepted at its face value. The contents of Exhibit R-2 was required to be proved by insurer. However, burden cast on insurer has not been discharged. Hence, much reliance cannot be placed on Exhibit R-2.

12. Be that as it may. Statutory provision as found in Chapter IV of Motor Vehicles Act, 1988 namely Sections 39 and 41 when read along with section 177 of the Motor Vehicles Act it would clearly indicate that non renewal of registration certificate would not invalidate the registration certificate itself or in other words if the renewal were to subsequently take place under sub-section (10) by collection of fine as contemplated under sub-section (11) such renewal would relate back to the date of expiry as found in registration certificate. In the instant case it is noticed that vehicle in question came to be registered on 18.10.1986. 15 years period contemplated under sub-section (7) of section 41 would come to an end at midnight of 17.10.2001. Thereafter Regional Transport Authority has transferred the ownership of said vehicle from the original registered holder Sri. K.R. Prabhu to the name of Sri. P. Jayanth (R-2) and thereafter with effect from 10.03.2005 to the name of Sri. Praveen D'Souza. Regional Transport Authority being aware that registration certificate issued to the offending was valid for a period of 15 years i.e., upto 17.10.2001 has subsequently transferred the ownership of the offending vehicle first to the name of Sri. P. Jayanth (R-2) and thereafter to the name of Sri. Praveen D'Souza on 10.03.2005. If the registration certificate issued to the offending vehicle had expired on 17.10.2001 there was no need or necessity for the transport authorities to recognise the transfer of ownership of said vehicle. As to whether registration certificate remained in vacuum during this period is not forthcoming and it cannot be so, in view of the fact that vehicle has also been subsequently transferred by issuing necessary endorsement by the Regional Transport Authority. This would itself clearly indicate that neither fine was levied under sub-section (7) or proceedings have been initiated u/s 177 of the Motor Vehicles Act against either original owner or subsequent purchaser by the authorities. The question which would be pegging the issue is as to why the ownership of the vehicle in question was transferred to the name of Sri. Praveen D'Souza if the registration of the vehicle was not in force, same has remained a mystery unraveled till date. As noticed hereinabove insurer having not tendered any cogent evidence in this regard Tribunal has rightly rejected said contention by assigning the reasons as noted in paragraph 16 of its judgment and award and this court is of the considered view that said finding does not suffer from any infirmities either on facts or in law calling for interference. Hence, contention of the learned counsel appearing for insurer stands rejected. Point No. 1 is answered against the appellant-Insurance company and it is held that insurance company is liable to indemnify the claim. RE: POINT NO.2

Perusal of judgment and award in question would indicate that claimant had sustained fracture of right femur and had sustained injuries all over the body as reflected in the wound certificate produced and marked as Exhibit P-5. Doctor who had treated the petitioner was not examined. Father of minor-claimant was examined and produced medical records to establish the injuries sustained by the minor-claimant. By taking into consideration the entire evidence available on record Tribunal has awarded a total compensation of Rs. 70,000/- which cannot

be said to be either excessive or exorbitant. Compensation awarded by Tribunal is just and reasonable. In that view of the matter I do not find any good ground to entertain this appeal. Hence, following order is passed:

ORDER

1. Appeal stands dismissed.
2. Judgment and award passed by MACT Bangalore in MVC 2576/2005 dated 29.12.2007 is hereby affirmed.
3. Amount in deposit is ordered to be transmitted to jurisdictional Tribunal forthwith by the registry for being disbursed in accordance with judgment and award passed by tribunal.