
(2002) 11 KAR CK 0015
In the Karnataka High Court
Case No : M.F.A. No. 2497 of 1996

New India Assurance Co. Ltd.

APPELLANT

Vs

Noor Jahan Begum and Others

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2003) ACJ 1616

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : S.V. Hegde Mulkhand, for the Appellant; A. Niranjana, for Basavaprabhu S. Patil and S. Srishaila, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned advocates for the contesting parties on merits. The insurance company, namely, the New India Assurance Co. Ltd. has assailed the order dated 19.3.1996 in M.V.C. No. 95 of 1995 whereby the M.A.C.T. has held the appellants liable to the extent of Rs. 3,10,500 plus interest. The first submission canvassed by appellant's learned advocate is that there is a serious defect in the original claim petition because he points out that the claim can only be sustained provided it has been directed against the owner of the vehicle and secondly provided negligence is established. Appellant's learned advocate submits that this is a case in which the owner of the motor tanker in question, namely, CNP 3751 has not been made a party to the proceeding and what is submitted is that the liability of the insurance company is only a vicarious liability and not a primary liability. In other words, what the appellant's learned advocate submits is that even if the other half of the liability which has devolved on the other insurance company were to be sustained for any reason that as far as the New India Assurance Co. Ltd., namely, the appellants are concerned that the claim petition is defective and that it will have to be dismissed. Reliance was placed on an earlier decision of this Court in New India Assurance Co. Ltd. Vs. Ravindra Nair, wherein the court was dealing with the aspect of the primary liability and a direction has been issued to the Tribunals to

ensure that even if by error the owner is not made a party that they should get this defect rectified and should not proceed with the hearing of the application. Respondents' learned advocate has submitted that the insurance company is a party who is de facto liable to make the payment, that the owner is nothing more than a formal party and even if the owner is appearing or not appearing that the burden of satisfying the compensation claimed remains fastened to the insurance company and in this view of the matter, his submission is that the non-inclusion of the owner as a respondent though a necessary party would not in any way vitiate the proceedings.

2. Appellant's learned advocate submitted that this is not a mere technicality because, everything right from the defence that can be pleaded gets substantially modified in a case where the owner is not made a party and consequently, he submitted that in the present case the court must hold that the omission to implead the owner would be fatal to the claim. While we do concede that the owner must be made a party in a given instance if due to error or negligence or otherwise this does not take place, it would be wrong to hold that it would frustrate the entire claim. In our considered view, it is an omission to be treated as an irregularity and not as an illegality. We also take judicial notice of the fact that having regard to the requirement in law for the insurance company to indemnify the owner that in actual practice the owner neither appears nor contests and that the defence is virtually left to the insurance company and in this background we hold that the present proceeding cannot be said to have been vitiated. We once again repeat the earlier directions from this Court to the Tribunals to be vigilant as far as this aspect of the law is concerned and to ensure that errors of this type do not recur in future. We need to observe in passing that if any real prejudice was caused to the appellants that they would have pointed it out to the M.A.C.T. and got the same rectified but in not having done so, the technicality that is pleaded at this stage cannot be upheld. Also, we note from the objections filed before the Tribunal that the appellants have claimed protection and the benefit of Section 170 of the Act before the trial court. Once this aspect of the law has been set at rest, the second grievance pleaded on behalf of appellants that there are no formal averments in the application alleging negligence against the driver of the tanker in which the deceased was travelling and that consequently the basis of the claim is non-existent cannot also be upheld. We are wholly in agreement with the appellant's learned advocate when he points out that these are requirements of law and that they should have been strictly observed by the claimant's learned advocate who drafted out and filed the claim petition before the trial court but we take note of the fact that irrespective of whether such a specific charge was made in the application or not that the court has taken cognizance of this requirement, has examined the evidence and has recorded a finding on negligence against the driver of the tanker.

3. A subsidiary contention which was raised was that the deceased was a passenger travelling in a goods vehicle and that too in a tanker carrying

petroleum products and that this constitutes a breach of the terms of the policy. First of all, this point was not taken up before the Tribunal but even so we have examined it as it is a point of law. The facts of the present case are very unusual because the tanker in question was carrying petroleum products on behalf of the Indian Oil Corporation. The deceased was an employee of the Corporation. He was working as a Field Operator and it has come on record that this was the reason why he was travelling and it is even pointed out that he was on duty at the relevant time. In view of the special facts and circumstances, we hold that the objection canvassed under this head is unsustainable.

4. As far as the quantification is concerned, the appellant's learned advocate is right when he points out that the learned Judge while extracting the figures from the salary certificate ought to have taken note of certain deductions particularly income tax, professional tax and the like. Since this submission is correct, we have very carefully gone through the figures as reflected in the various columns of the pay slip and have recomputed the amount payable under this head. Some of the amounts such as income tax and professional tax would necessarily have to be deducted and after doing this, we find that out of a total compensation of Rs. 4,75,240 the liability of the appellants would stand reduced to the figure of Rs. 2,35,120. This is the only modification that is required to be done with regard to the order of the M.A.C.T. As far as the rate of interest is concerned, though the respondents' learned advocate advanced a strong plea that it should be stepped up, on the facts of the present case and particularly the time factor and the situation prevailing at the point of time when the application was decided, we maintain the rate of interest at six per cent.

5. The appellants shall compute the aggregate amount due from them under the orders of this Court and deposit the same with the Tribunal within an outer limit of twelve weeks from today. On receipt of the amount in question, the Tribunal to act in consonance with the orders passed by the Claims Tribunal. Since respondent No. 6 appears to have passed away, the amount that accrues to his share shall be paid over to respondent No. 7. We also modify the order in respect of investment which shall be proportionately done in view of the reduced amount to prescribe that the amount shall be invested not with a scheduled bank but with the Post Office Savings Bank Monthly Income Scheme which is tax-free and the interest accrued on the investments shall be released by the post office to the claimant No. 1, wife. With these directions, the appeal which partially succeeds to stand disposed of. No order as to costs. The amount deposited by the appellants in this Court be transferred to the M.A.C.T.