(1992) 02 KAR CK 0035

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 433 of 1992

New India Assurance Co. Ltd. — APPELLANT

Vs

Raja Naika and another — RESPONDENT

Date of Decision : 19-02-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147 (1), 147 (3), 149, 167
Workmens Compensation Act, 1923 — Section 3, 30 (1)

Citation : (1992) ACJ 521 : (1993) 77 CompCas 219 : (1992) 65 FLR 97 : (1992) ILR (Kar) 1325 : (1992) 2 KarLJ 672

Hon'ble Judges : R.V. Vasanthakumar, J;N. Venkatachala, J

Bench : Division Bench

Judgement

N. Venkatachala, J.—Whether this appeal of the insurer filed u/s 30(1) of the Workmen''s Compensation Act, 1923, against an award made by the commissioner for Workmen''s Compensation by which it is made liable to pay compensation for death or bodily injury of a person on the basis of a certificate of insurance issued under sub-section (3) of section 147 in Chapter XI of the Motor Vehicles Act, 1988, is maintainable if it is not founded on a ground by which an insurer was entitled to defend, under sub-section (2) of section 149 of the Motor Vehicles Act, an action for compensation, being an important question arising for our consideration in deciding this appeal, we shall proceed to consider the same.

2. The appellant-insurer had issued the certificate of insurance under sub-section (3) of section 147 of the Motor Vehicles Act in favour of the second respondent-insured, the employer, covering his liability under the Workmen''s Compensation Act for death or bodily injury of his workman, the first respondent, who was the driver of a matador van bearing registration No. CTU 3000, a motor vehicle. When that motor vehicle was being driven on the National Highway No. 4 on October 22, 1989, by the first respondent, in the course of his employment under the second respondent, an accident occurred. As a result of that accident, the first respondent suffered severe bodily injuries affecting his right eye and

causing fractures of his right hand just below the elbow joint and two ribs. Consequently, the first respondent claimed compensation for his bodily injuries which totally impaired his ability to drive a motor vehicle, from his employer, the second respondent, and the insurer-appellant which had issued a certificate of insurance for the motor vehicle, by filing an application therefore under the Workmen''s Compensation Act before the Workmen''s Compensation Commissioner, Tumkur (for short "the Commissioner"). The Commissioner who took into consideration the bodily injuries suffered by the first respondent which had disabled him from carrying on his driving occupation, by his award under appeal, held the second respondent liable for payment of an amount of Rs. 89,730 as compensation under the Workmen''s Compensation act and directed its payment together with interest at 6 per cent. per annum from the date of accident till its payment by the second respondent-employer and the appellant-insurer.

3. In this appeal of the insurer filed u/s 30(1) of the Workmen''s Compensation Act against the said award of the commissioner, the amount of compensation awarded to the first respondent as computed under the provisions of the Workmen''s Compensation Act, is questioned as excessive, on grounds other that hose by which it, as an insurer, would have been entitled to defend a claim for compensation under sub-section (2) of section 149 of the Motor Vehicles Act. It is how the question which is formulated by us at the outset has arisen for our consideration in deciding this appeal.

4. As we have to find an answer to the said question from the material provisions of the Motor Vehicles Act and the Workmen''s Compensation Act which have a bearing upon it, we shall advert to those provisions to have the advantage of finding an answer from them.

5. Chapter XI of the Motor Vehicles Act contains provisions relating to compulsory insurance for risks arising from accidents in the use of motor vehicles in public places.

6. Section 146 of the Motor Vehicles Act is a provision in that Chapter which declares that no person can use or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI.

7. The provision in the proviso to sub-section (1) of section 147 of the Motor Vehicles Act in Chapter XI declares that the policy of insurance which is required to be compulsorily taken for the use of, causing the use of or allowing the use of a motor vehicle in a public place, must cover a liability arising under the Workmen''s Compensation Act, 1923 (8 of 1923), in respect of death of, or bodily injury to, an employee - (a) engaged in driving the vehicle; or (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle; or (c) if it is a goods carriage, being carried in the vehicle.

8. The provision in sub-section (3) of section 147 of the Motor Vehicles Act of the same Chapter declares that a policy of insurance to be taken for the purpose of Chapter XI would be of no effect unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance.

9. The provision in sub-section (1) of section 149 of the Motor Vehicles Act of the same Chapter requires the insurer who has issued a certificate of insurance under sub-section (3) of section 147 of the Motor Vehicles Act to satisfy judgments or awards to be made against the person insured by paying to the person entitled to the benefit of such judgment or awards (decree) any sum not exceeding the sum assured payable thereunder, as if the insurer was the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment (awards).

10. The provision in sub-section (2) of section 149 of the Motor Vehicles Act of the same Chapter runs thus :

"No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto an to defend the action on any of the following grounds, namely :

(a) that there has been a breach of a specified condition of the policy being one of the following conditions, namely :-

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

11. The provision in sub-section (7) of section 149 of the Motor Vehicles Act of the same Chapter declares thus :

"No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (3).

Explanation. - For the purpose of this section, ''Claims Tribunal'' means a Claims Tribunal constituted u/s 165 and ''award'' means an award made by that Tribunal u/s 168."

12. The provision in section 167 of the Motor Vehicles act of the same Chapter gives an option to claimants to choose the forum for claiming compensation, thus :

"Notwithstanding anything contained in the Workmen''s Compensation Act, 1923 (8 of 1923), were the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen''s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those acts but not under both."

13. Section 173 of the Motor Vehicles Act of the same Chapter provides for an appeal from an award of a Claims Tribunal, thus :

"(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees of fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

14. When we come to the provisions of the Workmen''s Compensation Act, section 3 of the Workmen''s Compensation Act provides for the employer''s liability for compensation. Section 4 thereof refers to the manner of computation of the compensation payable u/s 3 thereof. Section 4A thereof states that the compensation fixed u/s 4 shall be paid as soon as it falls due. Sub-section (3) of

section 4A thereof refers to a case of an employer committing default in paying compensation due under the Act within one month from the date it fell due and, the Commissioner in such a case making him liable for interest and penalty as provided for therein. Section 5 thereof provides for the method of computing wages of a workman which becomes necessary for computing the amount of compensation payable for the workman''s death or bodily injuries.

15. Section 30 of the Workmen''s Compensation Act Provides for filing of an appeal against the order (award) of the Commissioner thus :

"(1) An appeal shall lie to the High Court from the following order of a Commissioner, namely :-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise of disallowing a claim in full or in part for a lump sum :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal."

16. What emerges from the aforementioned provisions of the Motor Vehicles Act and the Workmen''s Compensation Act, has now to be seen for finding an answer to the question under consideration.

17. Taking of a certificate of insurance to be issued by an insurer to cover the liability of a person to pay compensation for death of, or bodily injury to, (a) the driver the vehicle; (b) the conductor of the vehicle or ticket examiner; (c) the employee carried in a goods vehicle, arising from the use of a motor vehicle in a public place, which is a liability under the Workmen''s Compensation Act, is made compulsory under the provisions of section 146, proviso to sub-section (1) of section 147 and subsection (3) of section 147 of the Motor Vehicles Act. The insurer who will have issued a certificate of insurance under sub-section (3) of the 147 covering the liability of person arising from the use of a motor vehicle in a public place for payment of compensation respecting his employee''s death or bodily injury, is required under sub-section (1) of section 149 of the Motor Vehicles Act, to satisfy the judgment or award made against the person insured. Sub-section (2) of section 149 of the Motor Vehicles Act which required that the insurer should be made a party to a proceeding to make him liable for payment of compensation on behalf of the insured respecting a judgment or award to be made therein, enables him to defend the action (claim) for compensation on only on any of the grounds mentioned therein and no other. Sub-section (7) of section 149 of the Motor Vehicles Act, in specific terms, states that the insurer cannot avoid his liability to any person who may become entitled to the benefit of any judgment or award under sub-section (1) thereof otherwise than in the manner provided for in sub-section (2) thereof.

18. As what is stated by our Supreme Court respecting sub-section (2) and (6) of section 96 of the Motor Vehicles Act, 1939, in British India General Insurance Co.

Ltd. Vs. Captain Itbar Singh and Others, would squarely hold good respecting the corresponding sub-section (2) and (7) of section 149 of the Motor Vehicles Act, 1988, which are substantially the same, it may be excerpted at 29 Comp Cas 64 :

"To start with, it is necessary to remember that apart from the statute an insurer has not right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of section 96, however, gives him the right to be made a party to the suit and to defend it. The right, therefore, is created by statute and its content necessarily depends on the provisions of the statute. The question then really is, what are the defences that sub-section (2) makes available to an insurer ? That clearly is a question of interpretation of the sub-section.

Now, the language of sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given ''shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely'', after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated and not others. If it were not so, then of course no grounds need have been enumerated. When the ground of defence have been specified, they cannot be added to. To do that would be adding words to the statute.

Sub-section (6) also indicates clearly how sub-section (2) should be read. It says that no insurer to whom the notice of the action has been given shall be entitled to avoid his liability under sub-section (1) ''otherwise than in the manner provided for in sub-section (2)''. Now the only manner of avoiding liability provided for in sub-section (2) is by successfully raising any of the defences therein mentioned. It comes then to this that the insurer cannot avoid his liability except by establishing such defences. Therefore, sub-section (6) clearly contemplates that he cannot take any defence not mentioned in sub-section (2). If he could, then he would have been in a position to avoid his liability in a manner other than that provided for in sub-section (2). That is prohibited by sub-section (6).

We, therefore, think that sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it."

19. The above decision of the Supreme Court, it is not disputed, makes it clear that the insurer who has issued a certificate of insurance under Chapter XI of the Motor Vehicles Act covering the liability of a person for payment of compensation for the death of, or bodily injuries to, certain persons arising from the use of a motor vehicle in a public place, cannot defend an action (claim) in a proceeding brought in that regard impleading him (it) as a party to such proceeding except on any of the grounds mentioned in sub-section (2) of section 149 of the Motor Vehicles Act and no other. Therefore, if the action for compensation arising out of

the use of a motor vehicle in a public place is taken against the insured person by institution of a proceeding before a Claims Tribunal envisaged under the Motor Vehicles Act by making the insurer who has issued a certificate of insurance under Chapter XI of the Motor Vehicles Act covering the liability of the insured person, the insurer could seek to defend such action only by raising any of the grounds made available to him under sub-section (2) of section 149 of the Motor Vehicles Act and no other. From this it follows, as a necessary corollary, that an award made by the Claims Tribunal envisaged under the Motor Vehicles Act, cannot be appealed against by the insurer by filing an appeal u/s 173 of the Motor Vehicles Act, unless the ground urged in support of such appeal could be any of the grounds in sub-section (2) of section 149, on which an action for compensation could have been defended by him (it).

20. When a "policy of insurance" issued under Chapter XI by the insurer covers the liability of a person for death or bodily injury of his employee arising out of the use of a motor vehicle in a public place, to compensation required to be paid under the Workmen''s Compensation Act, action for recovery of compensation for death or bodily injury of such employee could be taken by instituting a proceeding before the Workmen''s Compensation Commissioner under the Workmen''s Compensation Act because of the option made available to the claimant/s u/s 167 of the Motor Vehicles Act. If a proceeding is taken for recovery of compensation by impleading the insurer in such proceeding as required under sub-section (1) of section 149 of the Motor Vehicles Act by instituting an action (claim) therefore before the Commissioner under the Workmen''s Compensation Act, could the insurer defend such action on grounds other than those available to him under sub-section (2) of section 149 of the Motor Vehicles Act. We find it difficult to think that the insurer can defend such action taken under the Workmen''s Compensation Act on grounds other than those made available to him (it) under sub-section (2) of section 149 of the Motor Vehicles Act because having regard to the policy of insurance required to be compulsorily taken by the insured and issued by the insurer under the statute to cover certain risks, the statute itself limits the grounds on which an action for compensation covered by the policy could be defended by the insurer. The scope of defence of the insurer in an action brought by an employee or his legal representatives (dependants) for fixing the liability of the employer under the Workmen''s Compensation Act cannot, therefore, be other than what is permitted under sub-section (2) of section 149 of the Motor Vehicles Act when he (it) is impleaded as required under sub-sections (1) and (2) of section 149 of the Motor Vehicles Act to make him liable to satisfy the judgment or award to be made by the Commissioner. An argument advanced on behalf of the insurer that the reference to the Claims Tribunal in the Explanation found in section 149 of the Act should make us hold that the limiting of the grounds of defence of the insurer under sub-section (2) of section 149 of the Motor Vehicles Act should apply only when the action taken is before a Claims Tribunal, does not appeal to us since the court referred to in sub-section (2) of section 149 is wide enough to take

within its ambit "Commissioner" under the Workmen''s Compensation Act inasmuch as in the provision in the Motor Vehicles Act of 1939 corresponding to section 149 of the Motor Vehicles Act of 1988, there was no mention of the Claims Tribunal at all and yet the defences to be taken before the Claims Tribunal by the insurer under the Motor Vehicles Act of 1939 were those limited by that provision. Hence, when the insurer, in a proceeding under the Workmen''s Compensation Act, cannot defend an action for fixation of the liability of an employer for payment of compensation to his employee for his death or bodily injury on grounds other than those permitted by the statute under sub-section (2) of section 149 of the Motor Vehicles Act, it must follow as a necessary corollary that no appeal by an insurer u/s 30(1) of the Workmen''s Compensation Act against an award made by the Commissioner could lie on grounds other than those specified under sub-section (2) of section 149 of the Motor Vehicles Act, subject to a further condition that such grounds involve substantial questions of law required to be considered in appeal.

21. For the foregoing reasons, our answer to the question under consideration is that an appeal filed by the insurer u/s 30(1) of the Workmen''s Compensation Act, 1923, against an award made by the Commissioner for Workmen''s Compensation, by which it is made liable to pay compensation for death or bodily injury of a person on the basis of a certificate of insurance issued under sub-section (3) of section 147 in Chapter XI of the Motor Vehicles Act, 1988, which is not founded on a ground by which an insurer was entitled to defend under sub-section (2) of section 149 of the Motor Vehicles Act an action for compensation is unmaintainable.

22. As the present appeal of the insurer is not filed on any ground of defences available to it under sub-section (2) of section 149 of the Motor Vehicles Act, much less on a substantial question of law covering such ground, it is liable to be dismissed as unmaintainable.

23. In the result, we dismiss the appeal as unmaintainable.

