(2010) 06 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2643 of 2010 and Miscellaneous Cvl. No. 7006 of 2010

New India Assurance Co. Ltd. APPELLANT

Vs

Sri G. Nagaraju, Darshan and Likith represented by Grand Mother Smt. Hanumakka RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 163 A

Citation : (2011) ACJ 1129 : (2010) ILR (Kar) 3975 : (2011) 4 KarLJ 174 : (2011) 7 RCR(Criminal) 46

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : R. Jai Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—This appeal by the New India Assurance Co. Ltd., is directed against the judgment and award dated 19.12.2009 passed by the Motor Accidents Claims Tribunal-V, Bangalore City, in M.V.C. No. 8264/2008. The appellant is the Insurer of the TVS motorcycle bearing registration No. KA-04-EN-7380.

2. By the impugned judgment, the Tribunal has awarded a compensation of Rs. 5,06,500/- along with interest thereon @ 6% p.a. for the death of one Shobha in a motor vehicle accident that occurred on 22.08.2008 while she was travelling as a pillion rider along with her husband as rider of the aforesaid TVS motorcycle. The husband, who is respondent No. 1 herein, is the owner/insured of the motorcycle. The claimants are the children of the deceased and the insured, who are arrayed as respondent Nos. 2 and 3 herein. The claim petition was filed u/s 163A of the Motor Vehicles Act, 1988 (''the Act'' for short). The Tribunal, having found that the accident arose out of the use of the motorcycle, has awarded the aforesaid compensation.

3. The sole contention urged by the learned Counsel appearing for the appellant-Insurance Company is that the Tribunal had erred in law in making the Insurance Company liable for the award. His submission is that the deceased was not a third party; she being the wife of the insured, and the claimants being their children, no liability could be fastened on the appellant-Insurance Company. In support of his contention, he relied on the following judgments:

(1) Ningamma and Another Vs. United India Insurance Co. Ltd.,

(2) New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others,

(3) Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others,

(4) M. Akkawa v. New India Assurance Co., Poona AIR 1988 KAR 238

In my opinion, none of the aforesaid judgments are applicable to the facts of this case; in Ningamma and Sadanand Mukhi''s case, the deceased himself was riding the motorcycle, in Rajni Devi''s case, the deceased was the owner of the vehicle and in Akkawa''s case, the deceased was travelling as the representative of the owner of the vehicle. In this case, the deceased was neither the owner of the motorcycle nor was riding the motorcycle; she was only a pillion rider.

4. It is relevant to state that except the insurer and the insured, all others would become third parties. However, merely because the claim relates to the death of, or bodily injury to a third party and that the vehicle had valid insurance cover as on the date of accident, an insurer cannot be made liable for the award. Before making an insurer liable for the award, the question that requires to be examined is as to whether the risk in question is compulsorily required to be covered under the Act or is factually covered under the insurance policy. If the risk is covered either under the Act or under the policy, the next question to be examined is the limit of the insurer''s liability under the Act and under the insurance policy; the insurer''s liability shall be the higher of the two limits.

5. Coming to the facts of this case, there is no dispute that the motorcycle involved in the accident had valid insurance cover as on the date of accident. It is not the case of the Insurance Company that the policy did not cover the risk of pillion rider or that its liability is limited. The Insurance Company is also not relying on any of the statutory defences available under the Act to avoid the liability. The deceased was neither the owner of the motorcycle nor was riding the motorcycle; she was only a pillion rider. On the facts of the case, the deceased, though was the wife of the owner/insured, cannot be treated as the insured or his representative; hence she would become a third party. Accordingly, I find no legal infirmity in the impugned judgment in making the Insurance Company liable for the award. No ground to admit the appeal. Both the appeal and Misc.Crl. No. 7006/2010 filed for interim stay are dismissed. The amount lying in deposit with this Court shall be transferred to the Tribunal forthwith.

Appeal dismissed.

