

(2005) 06 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 2830 and 2832 of 2005

New India Assurance Company Limited

APPELLANT

Vs

Papaiah and Others

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 149 (1), 149 (5)

Citation : (2005) 3 ACC 825 : (2005) 3 CivCC 492 : (2005) 4 KarLJ 469

Hon'ble Judges : V. Jagannathan, J;S.R. Nayak, J

Bench : Division Bench

Advocate : O. Mahesh, for the Appellant;

Final Decision : Dismissed

Judgement

1. New India Assurance Company Limited, the appellant herein in both the cases, has questioned the correctness of the award passed by the MACT-V, Court of Small Causes, Bangalore City, in M.V.C. Nos. 2097 of 2004 and 2099 of 2004, fastening liability on the Insurance Company and directing it to pay the compensation to the claimants in the above two cases.

2. The facts involved in these two cases, in a nutshell, are as under:

The petitioners in M.V.C. No. 2097 of 2004 are the husband and children of deceased Jayamma and the petitioners in M.V.C. No. 2099 of 2004 are the wife and daughter of deceased Bharath. It is the case of the petitioners that on 10-3-2004, the above said Jayamma, Bharath and other family members had gone to Ugranarasimha Swamy Temple in an auto rickshaw bearing No. KA-06-7745, and at about 7.30 a.m., due to the rash and negligent driving of the auto by its driver, the auto turned turtle and fell into a ditch, killing on the spot Jayamma, Bharath and Chandana. Based on the claims made by the petitioners in the above mentioned cases and after considering the evidence let in by the petitioners, and in the light of the F.I.R., charge-sheet, sketch, mahazar, and post mortem reports filed, the Tribunal had no hesitation to arrive at the conclusion

that the accident took place due to the rash and negligent driving of the auto rickshaw by its driver. After considering the legal evidence adduced by the petitioners, the Tribunal awarded a sum of Rs. 3,44,000/- in M.V.C. No. 2097 of 2004, and a sum of Rs. 6,95,000/- in M.V.C. No. 2099 of 2004, and in both the cases, the Tribunal held that the appellant-Insurance Company is liable to pay the compensation awarded.

3. The main contention urged in these appeals by the appellant-Insurance Company is that the auto rickshaw had the permit only to ply within the radius of 10 kms. of Tumkur Town, whereas the accident took place at a place, which is 20 k.ms. away from Kyathasandra Police Station, Tumkur, and therefore, there was a clear breach of permit condition by the insured and as such, the Tribunal could not have held the Insurance Company liable to pay the compensation. No other grounds are urged in these two appeals so far as the quantum of compensation awarded by the Tribunal is concerned.

4. The learned Counsel for the Insurance Company contended that, before the Tribunal, R.W. 1 was examined on behalf of the insurer and the policy of insurance Ex. R. 2 and the permit in respect of the vehicle, Ex. R. 3, were marked and a specific defence was taken that the accident took place beyond the permitted geographical area and thus there was breach of policy condition by the insured and as such, the Tribunal ought not to have held the Insurance Company liable to indemnify the insured. In support of this submission, the learned Counsel referred to a decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

5. We have carefully gone through the material placed before us and in particular, the finding recorded by the Tribunal on the question of liability of the Insurance Company. The Tribunal has rejected the plea of the Insurance Company that it is not liable, and in arriving at this conclusion, the Tribunal placed reliance on a decision of this Court in the case of K.V. Thimmegowda Vs. Smt. Kamalamma and another, .

6. In the light of the contention urged before us, the only point for consideration is whether the order of the Tribunal directing the Insurance Company to pay the compensation to the claimants is sustainable in law?

7. No doubt, the Insurance Company did place the evidence of R.W. 1 and Exs. R. 1 and R. 2 to contend that the accident took place at a distance of about 20 k.ms. from Kyathasandra Police Station, whereas the permit covered only 10 k.ms. radius from Tumkur Town limits. In the face of the above said evidence placed by the Insurance Company, whether the Tribunal is justified in directing the Insurance Company to pay the compensation is the point to be considered.

8. In this regard, it has to be mentioned that, before the Tribunal, the actionable negligence on the part of the driver concerned has been established. Further, it is also not in dispute that the unfortunate deceased were all third parties as between the insurer and the insured. So far as the risk of third parties is

concerned, the law is well-settled and the Apex Court, in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , has held thus:

"Under Section 149(1) after a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. Where a liability has been established by a judgment, it is not permissible to look beyond the determination in order to establish the basis of the liability. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury. However, what would also be covered by the contract of insurance, vis-a-vis the beneficent statutory provisions like Section 149(1) of the said Act, would be when a death or bodily injury has been caused as a result of the assured's own voluntary act. Even an unforeseeable result of the assured's deliberate act may come within, the purview of an accident. Even if an accident has occurred due to negligent driving of the assured person, it may not prevent recovery under the policy and certainly thereby a third party would not be non-suited. Any condition in the insurance policy, whereby the right of the third party is taken away, would be void".

Further, in the above case, the Apex Court has observed as under:

"Section 149(5) which imposes a liability on the insurer must also be given its full effect. The Insurance Company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. Such an interpretation deserves to be given to the beneficent provisions of the Act having regard to their purport and object".

9. The learned Counsel for the appellant-Insurance Company, relying on the decision referred to by him, submitted that, in view of the auto rickshaw being found plying beyond the permitted limit of 10 k.ms. radius from Tumkur Town, the appellant is not liable. As regards this, no doubt, in the decision referred to by the appellant's Counsel, the Supreme Court has held that a person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has permit, but has violated any condition thereof, and plying of a vehicle without permit being an infraction, defence was available to insurer u/s 149(2). In the said case, the Supreme Court therefore held that the High Court was not justified in holding the insurer liable.

10. In the case before us also, even if the Tribunal has committed an error in holding that the Insurance Company is liable although the evidence placed by the Insurance Company did establish that the auto rickshaw was found plying beyond the permitted limit, yet, only on that ground, the Insurance Company

cannot avoid paying the compensation to the claimants because, in the very same decision referred to by the appellant's Counsel, the supreme Court, after holding that the High Court erred in holding the insurer liable, yet, having regard to the object of the Act, has observed thus:

"13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executive Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executive Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e., the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured".

11. Thus, in view of the settled position of law as laid down by the Apex Court in the cases referred to above, we are of the considered opinion that even if the Insurance Company is not liable, yet, having regard to the object of the Motor Vehicles Act and the victims being the third parties, the Insurance Company, though not liable, has to pay the compensation awarded to the claimants and the course open to it is to initiate proceedings against the insured before the very same Tribunal and take necessary steps to recover the amount awarded by the Tribunal from the insured.

12. In the result, both the appeals are dismissed reserving liberty to the Insurance Company to initiate proceedings before the Motor Accident Claims Tribunal, Bangalore City, for recovery of the compensation amount from the insured.