
(1977) 03 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 668 of 1975

New India Assurance Company Ltd.

APPELLANT

Vs

Parvathamma and Others

RESPONDENT

Date of Decision : 04-03-1977

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 (A), 96 (1), 96 (2)

Citation : (1977) ACJ 469

Hon'ble Judges : M.K. Srinivasa Iyengar, J;C. Honniah, J

Bench : Division Bench

Advocate : K. Suryanarayana Rao, for the Appellant; S. Pramila and H.L. Narasimha Sastry, for the Respondent

Final Decision : Allowed

Judgement

Srinivasa Iyengar, J.—The Appellant is the New India Assurance Company and the appeal is directed against the Award made by the Motor Accidents Claims Tribunal, Chickmagalur, imposing a liability on it in respect of an accident that occurred on 7-10-1973, caused by the driver of jeep MYU 248 resulting in the death of one Purudappa. The legal representatives of Purudappa filed a petition u/s 110(A) of the Motor Vehicles Act for compensation impleading Totada Eswarappa, the person in whose name the vehicle had been registered and also the insurance company. However, when the notice went to Totada Eswarappa, whose address had been given as C/o M/s. Moola Rangappa & Sons, one of the employees of M/s Moola Rangappa & Sons made a note on 27-11-73 that Totada Eswarappa had died two years back and the notice may be sent to M/s Moola Rangappa & Sons, Shimoga. Thereafter, an application was filed on behalf of the claimants to implead M/s Moola Rangappa & Sons of Shimoga and the case proceeded with. This, application was allowed. Thereafter, the said M/s Moola Rangappa & Sons were represented by Counsel and also filed statement of objections. They however, inter alia pleaded that they were not the registered owners of the vehicle and therefore they were not liable and further that the

driver was not in their employment. The insurance co. also filed a supplemental statement of objections contending that they were not liable as M/s Moola Rangappa & Sons was not the insured person and there was no liability on them to indemnify them.

2. The Tribunal after recording evidence came to a finding that the death of Purudappa was due to the rash and negligent driving of the driver of the vehicle MYU 248 and that the vehicle was in the control and use of M/s Moola Rangappa & Sons and they were liable to compensate the legal representatives of the victim. The Tribunal further made a direction that the insurance co. is also jointly and severally liable inasmuch as the insurance policy was current.

3. It is contended in this appeal that the liability to indemnify under the terms of the policy as also under the law was in regard to a liability of the insured and not liability of any other party such as Moola Rangappa & Sons in the instant case and the award imposing a liability on the insurance co. is untenable. From the facts and circumstances of the case, it is clear that the claimants did not proceed against the registered owner of the vehicle, but sought to proceed against Moola Rangappa & Sons who were using the vehicle and it was being driven by their driver at the time of the accident and who took notice of the claim. The learned Counsel for M/s Moola Rangappa & Sons, has however, contended that the insurance co. cannot be absolved of their liability as the policy was current. The question for decision is as to whether the insurance co. was liable even though there was no liability imposed on the insured. The answer, in our opinion, must be in the negative.

4. Under the policy of insurance, the person or persons specified in the policy is insured against any liability which may be incurred by him, that is the insured, in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of use of the vehicle in a public place. Section 96(1) of the Motor Vehicles Act is clear that any judgment in respect of any such liability as is required to be covered by the policy under Cl(b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment-debtor, in respect of the liability. Therefore, the principal requisite condition to enforce a liability on the insurer is that there should be a liability imposed on the insured. This is also clear from Section 95 (1)(b). The insurance is against any liability which may be incurred by the insured. The learned Counsel for M/s Moola Rangappa & Sons argued that the defences open to the insurer are restricted to those mentioned in Section 96(2) of the Motor Vehicles Act, That may be so. But the liability is to indemnify the insured though it will enure to the benefit of a third party. If there is a liability against the insured to be indemnified, then a decree obtained against

the insured can be executed against the insurer. The defences open to the insurer are quite independent. Thus, even though there may be a liability existing against the insured, the insurer can deny its liability on grounds specified in Section 96(2) of the Motor Vehicles Act, and if such grounds are established the liability to indemnify will not be fastened. But, in all cases there must be liability of the insured so as to bind the insurer and make him liable to answer the claim. In the instant case for whatever reason, the claimants did not proceed against the registered owner and the insured M/s Moola Rangappa & Sons if they were aggrieved by the decision of the Tribunal, their remedy was to appeal. Having suffered an award, they cannot be permitted to urge any ground against the insurer whose liability was only to indemnify the insured. To decide the dispute raised by the insurance co. it is not at all necessary to go into any contention, other than whether there was a liability of the insured. Therefore, M/s Moola Rangappa & Sons, who have suffered an award and not having appealed, cannot dispute the award as against them.

5. The learned Counsel for M/s Moola Rangappa & Sons submitted that notwithstanding the fact that no appeal was filed on their behalf, if they satisfied the claim, they may still be entitled to claim indemnification from the insurance company by a separate action and liberty may be reserved to take such action. We cannot anticipate the nature of action proposed to be taken in future and consider its tenability. All that we may say is that if they are advised to take other independent proceedings, they may do so and no reservation is necessary.

6. For the above reasons, the contention urged by the Appellant is sound and must be accepted. Accordingly, this appeal is allowed and the award of the Claims Tribunal in so far as it makes the appellant insurance company liable is set aside. In other respects the award shall stand.