
(1995) 09 KAR CK 0066
In the Karnataka High Court
Case No : M.F.A. No. 712 of 1994

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Shanthi and Others

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2), 170, 96 (2)

Citation : (1996) ACJ 495

Hon'ble Judges : S.A. Hakeem, J;B. Padma Raj, J

Bench : Division Bench

Advocate : M. Sowriraju, for the Appellant; K.T. Gurudeva Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Hakeem, J.—This appeal by the insurer is directed against the judgment and award passed by M.A.C.T. IX, Bangalore, in M.V.C. No. 1097 of 1991. The contest in this appeal is only against the quantum of compensation awarded by the Tribunal, which according to the appellant is excessive. The appellant has also filed an application u/s 170 of the Motor Vehicles Act, 1988, seeking relief to maintain and contest this appeal on all the grounds that are available to the insurer.

2. It is not disputed that the owner had duly contested the claim before the Tribunal. The insurance company was also a party therein. However, he has not chosen to file an appeal either against the quantum or in respect of the actionable negligence, which has been held against him. A bald averment is made in the affidavit that the insured had colluded with the claimants and hence not come forward to contest the award. This, in our opinion, is not sufficient to entitle the insurer to maintain the appeal especially since it has not reserved its right to contest the claim before the Tribunal. The law on the question is also well settled. In United India Insurance Co. Vs. Balasubramanyam, a Division Bench of this court has held that under the provisions of the Motor Vehicles Act both in the

original proceedings as well as in the appeal the insurer is entitled to raise only such of the grounds as are specifically provided in Section 96(2) of the Act (corresponding to Section 149(2) of 1988 Act). It is only in cases of collusion between the claimant and the owner of the vehicle that the insurance company could contest the claim petition on the quantum of compensation with the permission of the court. In fact, it is further held that in an appeal presented by the insurance company where it is entitled to urge only the ground of its non-liability or the extent of dis-liability the provisions of Order 41, Rule 22 regarding filing of cross-objections by the claimant are also not applicable.

3. In that view of the matter, we have no hesitation in holding that this appeal is not maintainable and has to be dismissed on this ground alone. The appeal is accordingly dismissed.