(2009) 02 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 9 of 2009

Oriental Insurance Company APPELLANT

Vs

Smt. Shobha A.V. and Others RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 170

Citation : (2009) 02 KAR CK 0051

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : B.S. Umesh, for the Appellant; N. Gopalakrishna, for R. 1 to R. 4, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioner has challenged in this writ petition the order passed by the Motor Vehicle Claims Tribunal rejecting the application of the Insurance Company seeking permission to cross examine the claimant on al grounds, on the ground that owner of the vehicle is contesting the case on merits.

2 Respondents-1 to 4 are the claimants in MVC No. 9296/07 and connected matters where compensation is claimed for the death of one P. Somashekar. Respondents-5 to 11 are also claimants in the connected petition. 12th respondent is the owner of the vehicle involved in the accident. He has filed detailed statement of objections denying the claim. After issues are framed, petitioner have led evidence in support of their claim. The Counsel on behalf of second respondent has cross examined the claimants. After the said cross examination is over, the Insurance Company filed application u/s 170 of the Motor Vehicles Act seeking permission of the Court to cross-examination P.W-1 on ail grounds. The said application is rejected by the Tribunal on the ground that the first respondent is contesting the matter. Aggrieved by the said order the petitioner is before this Court.

3. In memorandum of facts filed in support of the application for permission to cross examine P.W-1, at paragraph 3, learned Counsel has stated that the insured is not contesting the above claim petition. The respondent company suspects that the insured has colluded with the petitioner with ulterior motives. Therefore, permission was sought to cross examine the petitioner. It is not in dispute that the owner of the vehicle has filed counter. It shows that he is contesting the petition. But the pleadings in a case, if it is not supported by the evidence, has no value. After filing the pleadings, contesting the matter, if no cross examination is done by the petitioners in the light of the defence taken, the said pleadings do not in any way support the defence. In order to demonstrate that the owner is not contesting the matter reliance is based on cross examination portion which shows that the entire cross examination is in the nature of putting suggestions and there is no serious cross examination of P.W-1 regarding the facts set out in his examination in chief. The cross examination is done to demolish the case which is pleaded. In the end, normally the case of cross examining party is put to the witness by way of suggestions. Thus suggestion only indicates what the defence is. It is not the proof of defence, In a claim petition what the respondents have to demonstrate is that the claim put forth is not genuine or exaggerated and therefore the amount of compensation claimed is not proper. Suggestion in the cross examination in no way destroys the claim. Therefore, after filing a detailed counter denying the claim, a farce contest is made by way of cross examination only putting forth suggestion. The Counsel who was present in the Court watching the proceedings is constrained to file this application bringing to the notice of the Court, that the respondent is not really contesting the matter and there appears to be collusion between the petitions and the owner. In those circumstances, as public money is involved and once owner is not really contesting the claim, the Insurance Company cannot be denied the benefit of challenging the claim on merits. The Tribunal ought to have granted the permission sought for. Unfortunately, in the first place, the Tribunal has not given any reasons an sought to be given by judicial or quasi judicial authority and by a one word order has said that he has contested the matter, without understanding the seriousness end the complicity involved, has rejected the application. That should not be the approach of the Tribunal when a request is made by the Insurance Company to decide the claim on merits. All that the law declares is, if the owner of the vehicle which is primarily responsible to pay the compensation amount, contested the matter, except on the ground of denial of liability, the Insurance Company is not given the right to question the quantum. But when the owner makes a farce of contest, do not dispute the claim put forth by the petitioner in spite of cross examining him, it is not a contest in the eye of law and the Insurance Company gets a right to challenge the said evidence on merits also. Therefore, the impugned order passed by the Tribunal cannot be sustained. Hence, I pass the following order:

Writ petition is allowed. The impugned order is hereby set aside. The application filed by the Insurance Company seeking permission to cross examine P.W-1 is allowed. The Tribunal shall afford an opportunity to the Insurance Company to cross examine P.W-1 by recalling him for cross examination. No costs.