

(2003) 10 KAR CK 0068

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4681 of 2002

Oriental Insurance Company Limited

APPELLANT

Vs

K.C. Arunakumara and Another

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173 (1)

Citation : (2005) ACJ 4 : (2004) 1 KarLJ 335 : (2004) 1 KCCR 570

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Vishwanath S. Shettar, for Respondent-1 and B.V. Murali, for Respondent-2, for the Respondent

Judgement

Ram Mohan Reddy, J.—This appeal is filed u/s 173(1) of the Motor Vehicles Act, 1988 (for short, "Act"), by the insurer calling in question the judgment and award dated 13th March, 2002 passed in M.V.C. No. 2001 of 1996 on the file of the Motor Accidents Claims Tribunal, Bangalore (for short, "MACT").

2. The claimant/injured while going on his bicycle from B.T.M. Layout to N.S. Palya on 28-3-1996 at about 4.15 P.M., a lorry bearing No. KA-01/6783 driven by its driver in a rash and negligent manner came from the opposite direction and dashed against the bicycle of the claimant. The claimant fell down and sustained grievous injuries. The driver of the lorry was prosecuted in Crime No. 498 of 1996 by the jurisdictional police.

3. The claimant/injured instituted a claim petition in M.V.C. No. 2001 of 1996, seeking compensation for the injuries sustained by him in the accident. On notice, the respondents 2-the owner of the vehicle remained absent. The respondent 1, who is appellant herein resisted the claim of the injured. It was also contended that the driver of the lorry held only a light motor vehicle licence and therefore, did not have requisite licence for driving heavy goods vehicle. On this ground, the appellant sought to negate any liability out of the said accident. The MACT on the basis of the pleadings of the parties framed three issues. The

claimant/petitioner examined himself as P.W. 1 and one doctor Prakashappa T.H. as P.W. 2 and got marked documents Exs. P. 1 to P. 15. The appellant-Insurance Company examined one of its Assistant Divisional Manager as R.W. 1 and got marked document Ex. R. 1 said to be the certified extract of driving licence of the driver. The MACT on a consideration of oral and documentary evidence on record held the driver of the lorry as having caused the accident due to his rash and negligent driving. As regards the quantum of compensation, the MACT awarded total compensation of Rs. 71,080/- together with interest at 9% p.a. from the date of petition till its realisation. On the point of liability, MACT held that the driver of the lorry had not been disqualified from driving the vehicle and therefore, clamped the liability on both the Insurance Company as well as the owner of the lorry to pay compensation. The appellant-Insurer being aggrieved of the said finding regarding liability has preferred this appeal.

4. Having heard the learned Counsel for the appellant, the only question that arises for consideration in this appeal is:

"Whether the MACT was justified in fastening the liability to pay compensation on the appellant?

5. The learned Counsel for the appellant did not urge any grounds other than fastening of liability on the appellant. Therefore, it is not necessary for this Court to review the findings on other issues.

6. The appellant's case is that the driver of the offending vehicle did not possess a valid driving licence as on the date of accident and that the driver had a licence to drive light motor vehicle and in any event not a driving licence to drive the lorry, which was the cause of the accident. In support of the contention of the appellant, it had examined one Assistant Divisional Manager as R.W. 1 and got marked as Ex. R. 1 a document which is said to be a certified extract of driving licence of the driver. The MACT having considered the contention of the insurer vis-a-vis the document at Ex. R. 1, arrived at a conclusion that the driver of the motor vehicle involved in the accident is not disqualified from driving the vehicle involved in the accident, and accordingly rejected the contention of the insurer. Having perused the records, it is noticed that the document Ex. R. 1 said to be the certified copy of the driving licence issued by the licensing authority, Rajaji Nagar, Bangalore (West), in the column "licence to driver", there is scoring out in blue ink except the portion light motor vehicle. No certification is made to said scoring out. It is difficult to place reliance on such a certified extract. In the absence of any evidence of the licensing authority, no reliance can be placed on Ex. R. 1. Eschewing evidence of R.W. 1, there appears to be no material placed on record by the appellant-Insurance Company to substantiate its case. In fact, the appellant has not even produced the policy of insurance and therefore, the contention of the learned Counsel for the appellant deserves no merit.

7. The learned Counsel for the appellant sought to rely on the rulings of the Apex Court, particularly with regard to defences that may be taken by the insurer in a

proceeding before MACT and with specific reference to exonerate the Insurance Company in the event the vehicle in question was driven by an unlicensed driver. In the facts of this case, in particular, in the absence of any material to establish that the driver of the vehicle was involved in the accident did not possess the requisite licence to drive the vehicle coupled with the fact that insurance policy is also not produced, the judgments relied upon by the learned Counsel for the appellant have no application to the facts and circumstances of the case.

8. In the result, the appeal fails and it is dismissed. No order as to costs.

The deposit made before this Court is directed to be transmitted to the MACT, forthwith.