

(2003) 10 KAR CK 0079
In the Karnataka High Court
Case No : M.F.A. No's. 6273 and 6274 of 2003

Oriental Insurance Company Limited	Vs	APPELLANT
Ramesh B. Jain and Others		RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2), 181

Citation : (2004) ACJ 677 : (2003) ILR (Kar) 5164 : (2004) 1 KarLJ 456 : (2003) 4 KCCR 399 SN

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A.M. Venkatesh, B.K. Shivanna Gowda, for the Appellant; H.N. Nanjundaiah, for R1 and Gurulingaiah T.R., for C/R1 to R 4, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—These Miscellaneous First Appeals are filed by the insurer of the motor vehicle involved in the accident, calling in question the common judgment and award dated 22.4.2003 passed in MVC Nos. 2942 and 2687/1997 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, (SCCH No. 7), Bangalore ("MACT" for short).

2. The facts, in brief, giving rise to the present appeals are:

One Roopesh Jain was riding Kinetic Honda bearing registration No. KA-02-L-5543 and Ramesh Jain was the pillion rider. On 20.4.1997, at about 11.20 p.m., on M.G. Road, near Spencer Building, a Tempo bearing certificate of Registration No. KA-05-745 came in rash and negligent manner and dashed against the Kinetic Honda, by which the rider and the pillion sustained grievous injuries. Roppesh Jain, the rider was declared dead on arrival to the hospital, while Ramesh Jain, the pillion rider was admitted to St. Marthas Hospital. The Cubbon Park police charge sheeted the driver of the tempo for rash and negligent driving.

3. The claimants in MVC No. 2942/97 are the parents, younger brother and sister of the deceased. The claimant in MVC No. 2687/ 97 is the injured. Respondent No. 1 in MVC No. 2942/97 and Respondent No. 2 in MVC No. 2687/97 is the appellant before this Court in both the appeals. Respondent No. 2 in MVC No. 2942/97 and Respondent No. 1 in MVC No. 2687/97 is the owner of the motor vehicle, which caused the accident while Respondent No. 3 in the both the claim petitions is the driver of the vehicle. On notice, the driver of the offending vehicle remained absent and was placed ex-parte, and subsequently, he was deleted by the claimants, in both the petitions. The only contesting party was the appellant - insurer. The appellant in its statement before the MACT had admitted the existence of a valid policy of insurance of the tempo for the period from 7-2-97 to 6-2-98, while denying all other material averments set out in the claim petitions. In addition, the appellant had specifically contended that the driver of the tempo did not hold a valid and effective driving licence as on the date of the accident and on that ground they were not liable to pay any compensation. On the premise of the aforesaid pleadings, the MACT framed issues with regard to rash and negligent driving and entitlement to compensation. The claimants examined two witnesses as PW. 1 and PW. 2 and 204 documents were exhibited as Exs. P1 to P204 while the respondent-Insurance company examined two witnesses RW.1 and RW.2 and produced 8 documents marked as Exs. R1 to R8. The MACT on evaluation of the oral and documentary evidence, attributed actionable negligence to the driver of the tempo in causing the accident resulting in death of the scooter rider Roopesh Jain and grievous injuries to Ramesh Jain, the pillion rider. On the question of quantum of compensation, the MACT awarded a sum of Rs. 2,41,000/- to the claimants/dependents in MVC No. 2942/97 and Rs. 2,40,000/- to the claimant-injured in MVC No. 2687/97 together with interest at 6% p.a., from the date of petition till the date of payment. With regard to the issue of liability of the insurance company, the MACT found that the insurer had failed to substantiate its contention therefore was held liable to pay the compensation. The appellant-insurer being aggrieved of the finding of the MACT making it liable to pay the compensation has preferred these two appeals.

4. Having heard the learned Counsel for the appellants, the question that arises for decisions making in these appeals is "whether the MACT was justified in clamping the liability to pay the compensation on the appellant, in the facts and circumstances of the case?"

5. Sri A.M. Venkatesh, learned Counsel for the appellant contends that the MACT committed an error in law and on fact in fastening the liability to pay compensation on the Insurance Company though the appellant had established the fact that the driver of the tempo did not have a valid driving licence. Dilating on the said contention, the learned Counsel pointed out that he had examined RW.2-the Investigating Officer in the Criminal Case, in which the driver of the tempo was charge sheeted for not possessing a driving licence under Section 181 of the M.V. Act. In addition, he also contends that he had examined R.W.1 - the Officer of the Appellant - Insurance Company to establish that notices were

issued to the driver and the owner of the tempo calling upon them to produce the driving licence of the driver of the tempo. Learned Counsel further submits that there was substantial legal evidence both oral and documentary, placed before the MACT by the appellant to clinch the issue that the driver of the vehicle did not possess a valid driving licence and as a result, the defence taken by the appellant under Sub-section (2) of Section 149 of the Motor Vehicles Act, 1998, ought to have been allowed and the liability if at all was to be fastened on the owner of the tempo alone. It is his further case that the records Exs. R1 to R8 established breach of terms of the insurance policy. On the aforesaid contentions, the learned Counsel sought for interference with the finding of the MACT, by this Court.

6. The fact that the tempo had caused the accident due to the rash and negligent driving by its driver is not in dispute. The fact that the deceased Roopesh Jain died due to the accident and Ramesh Jain, the pillion rider suffer grievous injuries is also not in dispute. The compensation awarded to the claimants is also not dispute. The only point that requires consideration is "whether the evidences of RW.1 and RW.2 coupled with the documentary evidence at Exhibits R1 to R8 are sufficient to substantiate the case of the appellant of proof of breach of terms of the policy thereby entitled to be discharged from the liability to pay compensation. It is no doubt true that the driver of the tempo has been prosecuted for the offences punishable u/s 3 read with Section 181 of the M.V. Act for not possessing a valid licence and also for rash and negligent driving. The evidence of RW.2 i.e., the Circle Inspector, who investigated the said crime, testified to the materials collected in the course of investigation and the prosecution commenced against the driver. This evidence of RW.2-Circle Inspector, does not finally establish that the driver of the tempo did not at all possess a valid driving licence, but discloses that he has prosecuted the tempo driver for not producing the driving licence. His evidence therefore, is not of much assistance to the appellant in order to establish that the driver of the tempo did not possess a valid driving licence at all. The evidence of RW.1, one of the officers of the appellant is only with regard to the issuance of certain letters said to have been addressed to the owner and the driver of the tempo. Neither it is the case of the appellant that notice was served on the said driver and the owner nor is it in the evidence of RW.1 that the notices had been served on them personally. RW.1 has spoken to the records and has no personal knowledge of the fact of addressing letters or their service on the owner and the driver of the motor vehicle. This evidence also does not come to the aid of the appellant to discharges its primary duty to establish that there was breach of terms of the policy. The MACT has held that the insurer - appellant herein had failed to substantiate the said contention in order to escape from the liability to pay the compensation. No exception can be taken to the said finding of the MACT in the present facts and circumstances of the case. The appellant having not been able to establish the case in order to secure the benefit of Sub-section (2) of Section 149 of the Act, this Court cannot interfere with the impugned judgment and

decree on the grounds set out in the appeal memorandum. It is needless to say that the claimants are entitled to recover the compensation amount awarded in the common judgment and award impugned in these appeals from the insured in accordance with law, if so advised. The amount in deposit before this Court is directed to be transmitted to the MACT forthwith.

7. Accordingly, the appeals are dismissed. No order as to costs.