(2013) 08 KAR CK 0127

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6410 of 2009 (MV)

Shri. Rangappa @ Rangappa Shetty APPELLANT

Vs

Shri. Jayaramaiah and The Divisional Manager, The United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2014) 2 AKR 263 : (2014) ILR (Kar) 191

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Shripad V. Shastri and Sri. K.V. Naik, for the Appellant; M.S. Sriram, for R.2 and Sri. A. Hanumanthappa, for R. 1, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant challenging the Judgment and award made by the Tribunal on the ground of liability. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. Learned Counsel for the claimant submits, the offending vehicle was insured with the second respondent and the policy was in force as on the date of accident. In spite of that the Tribunal has committed an error in not fastening liability on the insurer merely on the ground that the fitness certificate issued in respect of the offending vehicle was expired prior to the accident and it was not renewed subsequently and the vehicle did not have fitness certificate as on the date of accident. In support of his submission, he relied upon a Division Bench judgment of this Court in MFA No. 6621/2006 c.w. MFA CROB No. 304/2006 disposed of on 18th September, 2007.

4. Learned Counsel for the insurer of the offending vehicle submits, admittedly

the offending vehicle did not possess the fitness certificate as on the date of accident to use it on road and therefore the Tribunal is justified in not fastening the liability on the insurer of the offending vehicle. In support of his contention, he relied upon a judgment of the Allahabad High Court in the case of Chandresh Kumar Agarwal Vs. Yogendra Kumar Srivastava and Another, .

5. In reply, learned Counsel for the claimant submits, in the case referred by the insurer, the vehicle was not having permit as well as fitness certificate as on the date of accident. Considering the same, it was held in the said case that the owner of the offending vehicle is liable to pay compensation to the claimant and therefore the said judgment has no application to the facts of the case.

6. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 22-03-2008 due to rash and negligent driving of an offending autorickshaw bearing registration No. KA-01-5717 by its driver and quantum of compensation awarded by the Tribunal, the only point that remains for my consideration in the appeal is:

Whether Tribunal is justified in fastening liability on the owner of offending vehicle instead of fastening it on the insurer of the offending vehicle?

7. It is no doubt true as per - Ex.R. 1 an endorsement issued by the RTO, the fitness certificate of the offending vehicle was not in force as on the date of accident. If that is so the insurer should not have insured the vehicle for the period during which vehicle did not possess the fitness certificate. The insurer cannot say they would insure a vehicle irrespective of the fact that whether it has a fitness certificate or not and collect premium and when it comes to liability, their liability is subject to vehicle possessing fitness certificate. It is in this background, a Division Bench of this Court in the case of The New India Assurance Co. Ltd. v. Sri. N. Srinivasa Murthy and others MFA No. 6621/2006 c.w. MFA CROB No. 304/2006 has held, that the vehicle not having fitness certificate cannot be a reason for the insurance company to deny compensation to the claimant. The facts of this case are identical to the facts involved in MFA No. 6621/2006 c.w. MFA CROB No. 304/2006 and therefore the matter is fully covered by the said judgment of division bench.

8. The life of an insurance policy issued in respect of a motor vehicle will be valid for one year and for every next year either it has to be renewed or new policy has to be obtained. Therefore, the insurer at every time of insuring a vehicle and issuing policy or renewing such policy should verify whether the vehicle has possessed all the necessary certificates including the fitness certificate. The insurance companies cannot blindly insure motor vehicles and collect premium and thereafter contend that the vehicle did not possess fitness certificate at the relevant point of time and therefore they are not liable to pay compensation to the claimants. This attitude of the insurer cannot be encouraged any longer.

9. In the instant case, as per Ex R.1 - an endorsement dated 27.12.2008 was issued by the ARTO Bangalore Central at the request of the Insurer, the FC

(Fitness Certificate) of the offending vehicle has been renewed up to 30-01-2007. As per Ex. R.2 the second respondent insured the offending vehicle on 05-02-2008 valid up to midnight of 04-02-2009. So at the time of insuring the vehicle itself, the vehicle was not having the fitness certificate, much less as on 05-02-2008 - the date on which the vehicle was insured. These things happen because the insurance companies do not employ trained agents on permanent basis fixing responsibilities. The agents now working in the various insurance companies work on commission basis obviously without having any responsibilities or accountability for the acts done by them. When they work on commission basis obviously they concentrate on their commission rather than the risk of third parties involved behind such policy. It is high time for the persons working at Managerial level of the insurance companies to examine the matter in the light of the observations made herein and take appropriate measure in this regard. In order to enable them to do so, a copy of this order is ordered to be sent to the Chairman/Managing Director of all the Insurance Companies functioning in the country which have branches in the State of Karnataka. Accordingly, the appeal is allowed. The judgment and award of the Tribunal is modified. The insurer is directed to pay compensation awarded by the Tribunal. It is open for the insurer to initiate separate proceedings and recover compensation from the owner of the offending vehicle.

The Registrar (Judicial) shall furnish a copy of this order to the Chairman/ Managing Director of all the Insurance Cos. functioning in our country which have branches in the State of Karnataka after obtaining necessary permission from the Hon''ble Chief Justice.

No order as to costs.

