(2013) 12 KAR CK 0013

In the Karnataka High Court

Case No : M.F.A. No. 30211 of 2013

Shriram General Insurance Co. Ltd. APPELLANT

Vs

Ashok @ Ashokram and Bhagwan Shankar RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0013

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Sangeetha G. Bhadrashetty, for the Appellant; Basavaraj R. Math Advocate for R1, Sri. Harshavardhan R. Malipatil, for R2 in MFA Nos. 30211, 30212, 30213, 30214, 30215, 30216/2013 and for R3 in MFA No. 30216/2013, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—As all these appeals arise out of common judgment and award passed by the Tribunal, they are heard together and are being disposed of by this common judgment. Though these appeals are listed today for hearing on Interlocutory application, by consent of learned counsel appearing on both the sides, they are heard for final disposal.

2. The common appellant-Sriram General insurance Company Ltd., is aggrieved by the common judgment dated 31.6.2012 passed by the Presiding Officer, MACT, FTC-I at Raichur in MVC Nos. 649/2011, 650/2011, 651/2011, 687/2011, 5/12 & 810/11 fastening the liability to satisfy the awards in each of these cases on it.

3. The common grounds of attack raised in these appeals are:

(i) The offending vehicle being a transport vehicle viz., a passenger carrying vehicle, was not covered by a permit as required by Section 66 of M.V. Act as on the date of the accident and therefore, there was violation of the terms of the policy, as such, the insurer is not liable to indemnify the insured.

(ii) The driver who was on the wheels of the offending vehicle at the time of the accident did not possess a valid licence to drive the class of vehicle involved in the accident.

On the above grounds it is contended that the Tribunal has committed error in saddling the liability on the insurer to satisfy the awards.

4. Upon service of notice of these appeals, respondents-claimants have appeared through their learned counsel.

5. I have heard the learned counsel appearing for the common appellant and the respondents-claimants in each of these cases.

6. There is no dispute as to the occurrence of the accident as a result of collision between the jeep bearing No. KA36 M 766 in which the claimants, injured and deceased Basheeruddin, were proceeding and the cruiser jeep bearing No. AP22 X 615 insured with the appellant at about 11.45 a.m. on 25.4.2011 near Shakthinagar, Raichur.

7. The claim petitions were filed against the owner and insurer of the jeep bearing No. AP22 X 615. The appellant-insurer contested the claim petitions on the above noted grounds. The Tribunal by the judgment under appeal has rejected the contentions raised by the appellant-insurer and has directed the appellant to satisfy the award in each of the cases.

8. The finding of the Tribunal that the accident in question was due to the negligence of the driver of the insured vehicle is not seriously disputed. The quantum of compensation awarded in each of these cases is also not seriously challenged. The serious challenge is only as to the liability of the insurer to satisfy the awards.

9. Having heard the learned counsel for the parties and on perusal of the judgment under appeal as well as the various precedents relied on by either sides, I am of the considered opinion that there is absolutely no substance in the contentions urged by the appellant-insurer and that the Tribunal has not committed any error in fastening the liability on the appellant-insurer.

10. No doubt, the offending vehicle being a passenger carrying vehicle is a transport vehicle. Section 66 of the M.V. Act requires every transport vehicle to be covered by a permit before it is being used in public places. Sub-section (3) of Section 66 of the Act sets out certain exemptions, in respect of which the condition as to the permit is not applicable.

11. According to the learned counsel for the appellant, in its written statement filed before the Tribunal there was a specific contention that the vehicle was not covered by any permit issued by the competent authority and in spite of such objection the owner of the vehicle though represented by counsel before the tribunal did not produce the permit. It is also the contention of the learned counsel for the appellant that necessary application was also filed before the

Tribunal seeking a direction to the owner of the vehicle to produce the permit, if any, and though a direction was issued in that regard, he did not produce the permit, but on the other hand, he produced only the documents such as registration certificate and a copy of the driving licence. Under these circumstances, it is contended that the fact that the offending vehicle was not covered by a permit is very much evident, as such the Tribunal is not justified in fastening the liability on the insurer. Reliance was also placed on a decision of the Division Bench of this Court in B.T. Venkatesh Vs. Jagadeesh Kumar and Others, and a Single Bench decision in the case of The New India Assurance Company Ltd. Vs. M Sureshappa and Smt. Sanna Durgamma @ Ramajji Durgamma .

12. On the other hand, the learned counsel for the respondent-claimant contended that want of permit in respect of the offending vehicle would not be a ground of defence available to the insurer u/s 149 of the Act, since, the claimants are third parties vis-?-vis the offending vehicle and the insurer. Reliance was placed on the decision of the Single Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Smt. Mahadevamma, Raju and H.M. Gopal Reddy, .

13. Section 149(2) of the M.V. Act sets out the defences available to the insurer, on which the insurer of a vehicle could defend a claim. As per Section 149(2)(a)(i)(a), the defence as to the fact that the vehicle is not covered by a permit to ply for hire or reward would arise if the vehicle at the time of the accident is used for hire or reward.

14. In the case on hand, there is no specific pleading as to whether the offending vehicle, which was a transport vehicle and not covered by a permit was actually used for hire or rewarded at the time of the accident. Section 66(3) of the Act sets out the various exemptions. Under clause (p), the provision of Section 66(1) would not apply to any transport vehicle while proceeding empty to any place for the purpose of repair.

15. Though the learned counsel for the appellant by drawing the attention of the Court to the contents of the FIR-Ex. P1 that in the offending vehicle there were certain persons, is not able to point out either from the pleading or from the evidence that the vehicle at the time of the accident was actually used for hire or reward.

16. Admittedly, the claimants and the deceased were proceeding in the other vehicle, to which the insured vehicle dashed resulting in the accident. Therefore, having regard to the facts and circumstances of the case, it is not open to the appellant-insurer to raise a defence that the vehicle was not covered by a permit, as such the insurer is not liable to indemnify the insured.

17. In B.T. Venkatesh''s case referred to supra, the offending vehicle was a auto rickshaw covered by a permit and as per the permit the vehicle was to be driven only within the town municipal limits while the accident therein occurred outside the municipal limit. Therefore, the Court held that there is a violation of the

permit conditions.

18. In M. Sureshappa''s case referred to supra also the vehicle involved was an auto rickshaw and the same was driven beyond the limits permitted under the permit. It is under those circumstances, this Court held that there has been violation of permit condition, as such the insurer is not liable. However, in the case on hand, even according to the insurer the vehicle in question was not covered by a permit. Therefore, it is not a case of violation of permit conditions. On the other hand, according to the insurer it was a case of plying the vehicle without a permit, which may be an offence under the M.V. Act. As already noticed above, if the vehicle was being taken for repair without carrying any person, there is no necessity to have permit. This Court in Mahadevamma''s case (supra) has held that in respect of third party claim, the insurance company cannot absolve from liability on the ground of violation of permit conditions. Having regard to the facts and circumstances of the case, the principles laid down in Mahadevamma''s case are squarely applicable Therefore, I am of the considered opinion that the Tribunal is justified in rejecting the contention as to the non-availability of permit.

19. With regard to the driving licence, even according to the learned counsel for the appellant, the owner of the offending vehicle, pursuance to the order issued by the Tribunal produced a copy of the driving licence, which is marked as Ex. R2 during the enquiry.

20. Perusal of the records indicates that Ex. R2 is a smart card issued by the concerned RTO. There is no dispute that at the time of the accident the offending vehicle was driven by respondent No. 1, incidentally the owner of the vehicle.

21. According to Ex. R2, the driver possessed a licence to drive AR, LMV, MCWG, which is non-transport vehicle and the validity of the licence was up to 09.07.2027, while he was also authorized to driver AR, MTL - transport vehicle and the validity of the licence was up to 22.10.2011.

22. Learned counsel for respondent-claimant in MFA No. 30211/2013 has filed an application- I.A. 4/13 under Order 41 Rule 27 of CPC seeking permission to produce the letter of Transport Department, Government of Andhra Pradesh along with the DL particulars of respondent No. 1. According to this report, respondent No. 1-driver of the offending vehicle secured a licence to drive non-transport auto rickshaw on 10.7.2007 and a transport auto rickshaw on 23.10.2008. He was also permitted to drive Light Motor Vehicle non-transport, MCWG, non-transport and Million-transport. He was also authorized to drive motor cab. Thus, from the above documents it is clear that, as on the date of the accident the driver of the offending vehicle possessed a licence to drive a transport vehicle. The offending vehicle admittedly is a transport vehicle. Therefore, it is clearly established that the driver of the offending vehicle possessed a valid licence to drive the class of vehicle involved in the accident. In this view of the matter, there is no substance in the contention raised by the

appellant-insurer with regard to the driving licence. In this view of the matter, I find no merit in any of the contentions urged by the learned counsel for the appellant against the judgment and awards passed by the Tribunal. The judgment and awards of the Tribunal does not suffer from any perversity or illegality warranting interference by this Court. Therefore, the appeals are devoid of merit consequently are dismissed. The statutory deposits in each of these appeals are ordered to be transmitted to the Tribunal concerned.