(2011) 03 KAR CK 0345

In the Karnataka High Court

Case No : M.F.A. No. 3694 of 2009

Sri N.M. Vishweshwara APPELLANT

Vs

Sri Devaraju Shetty and The Divisional Manager National Insurance Co. Ltd. RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0345

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : P. Nataraju, for P. Nataraju Associates, for the Appellant; M.E. Madhusudhan, for R-1 and K. Sridhar, for R-2, for the Respondent

Final Decision : Allowed

Judgement

H.S. Kempanna, J.—This appeal is by the owner challenging the impugned judgment and award dated 2.2.2009 passed in MVC. No. 342/2006 by the Civil Judge (Sr.dn.) & JMFC, K.R. Pet, allowing the claim petition filed by the claimant in part and awarding compensation in a sum of Rs. 92.000/- with interest at 6% p.a. from the date of the petition till realisation and fastening the liability to pay compensation awarded in the case on him.

2. The parties in this appeal would be referred to by their rankings as they are arrayed in the claim petition before the Tribunal.

3. The facts in brief are:

The Claimant filed claim petition before the Tribunal praying for grant of compensation from the Respondents, in respect of the injuries which he sustained in a motor accident that took place on 9.7.2005 at about 4 p.m. near Hemandalli village, Seelanere Hobli, K.R. Pet Taluk involving the tractor trailer bearing Regn No. KA-11 /T/4531-4532 owned by the first Respondent and insured with the second Respondent at the relevant point of time. In the impugned accident he sustained severe injuries for which he took treatment in the hospital by spending huge money. Despite the same, he is not completely cured of the injuries due to which, he is unable to carry on his avocation which has resulted in loss of income. Hence, on these grounds he filed the claim petition before the tribunal claiming compensation against the Respondents.

After service of notice, the second Respondent insurer remained absent. Hence, they were placed exparte The first Respondent-owner appeared and contested the claim of the Petitioner. It was contended that he is the owner of the tractor trailer involved in the case. The accident has not taken place on account of the fault of his driver. On the other hand, it has taken place due to the negligence of the claimant himself. The driver did possess valid and effective driving licence as on the date of the accident which was in force. He denied all other averments made by the claimant in his petition. He further contended that the offending-tractor trailer had been insured by him with the second Respondent insurer as on the date of the accident. If for any reason he is held liable, the liability to pay compensation be fastened on them. Accordingly, sought for dismissal of the petition as against him.

On the basis of the above pleadings, the Tribunal in all framed three issues.

The claimant/Petitioner in support of his case got himself examined as PW1 and the doctor who treated him as PW2. He produced 14 documents which came to be marked as exhibits P1 to P14.

On behalf of Respondent No. 1, he got himself examined as RW1 in examination in chief, but he did not turn up for subjecting himself to cross examination. He did not choose to produce any documents in support of his case.

The tribunal considering the oral and documentary evidence on record held that the accident in question has taken place solely on account of the fault of the driver of the offending tractor-trailer. Accordingly, the claimant has established actionable negligence. Further, the tribunal" looking to the evidence of the claimant, the doctor PW2 who has examined him and other documents, awarded a total compensation of Rs. 92,000/- with interest at 6% p.a. from the date of the petition till realisation. Further, the Tribunal holding that the offending tractor trailer had not been insured with the second Respondent-insurer as on the date of the accident and as the first Respondent has also not produced any documents in support of the same, absolved the second Respondent from payment of compensation and fastened the liability of payment of compensation on the first Respondent-owner.

The Appellant, who is the owner, being aggrieved of the judgment and award saddling the liability of payment of compensation on him is in appeal before this Court.

4. Learned Counsel appearing for the Appellant submitted that though the Appellant-owner in his objection filed before the tribunal has taken a specific stand that the tractor trailer owned by him had been insured with the second

Respondent-insurer and his risk has been covered by the second Respondent, as he could not place the policy before the tribunal, the tribunal has fastened the liability of payment of compensation on him. He submitted that since the policy which has been issued in respect of the offending tractor by the second Respondent is a farmers'' and package insurance policy, his risk is covered by the second Respondent and therefore, he should be afforded an opportunity to place this on record to get himself absolved of his liability from payment of compensation. In that view of the matter, he submitted that the matter be remitted back to the Tribunal for affording an opportunity to place the policy on record and to establish that he is not liable to pay any compensation.

5. On the other hand, the learned Counsel appearing for the contesting-insurer submitted that the vehicle in question has been used at the time of accident for commercial purpose and not for the purpose for which, the risk of the insurer had been covered under the policy. Therefore, the impugned order absolving them of their liability does not call for any interference. Accordingly, the appeal be dismissed.

6. the learned Counsel for the first Respondent-claimant in this appeal, though notified has remained absent.

7. Taking, the rival submissions into consideration the evidence and the documents on record, the point that arises for my consideration is:

Whether the impugned judgment and award passed by the tribunal fastening the liability on the Appellant-owner is sustainable?

8. The facts are not in dispute. The claimant having met with accident, injuries sustained, treatment that he has taken and the amount spent are not in dispute. Further, the quantum of compensation determined by the Tribunal is also not seriously disputed before this Court. According to the counsel for the Appellant since the second Respondent-insurer have covered his risk by issuing farmers'' package policy and as he had used his vehicle in accordance with the terms and conditions of the policy he is not liable to pay any compensation. Unfortunately, though the owner contended in his objection statement before the tribunal that the policy issued had covered his risk it has not been placed before the Court. The second Respondent-insurer have remained exparte. Therefore, if an opportunity is given, he would place the policy before the Tribunal and establish that he is not liable to pay any compensation as his risk is covered by the second Respondent- insurer in view of the policy that they have issued.

Further, before this Court, the counsel appearing for the insurer also fairly submitted that as they have been placed exparte, they have also no opportunity to contest the claim of the Petitioner/claimant and that of the owner. In view of the specific assertion made by the owner in his written statement that as on the date of the accident, the second Respondent-insurer has issued the policy covering his risk which unfortunately has not been placed on record, in the facts and circumstances, I deem it fit that an opportunity should be given to the

Appellant-owner to establish his case that his risk as on the date of the accident had been covered by the second Respondent-insurer. In view of this, the impugned order fastening the liability on the Appellant-owner cannot be sustained.

9. In the result for the foregoing reasons, I proceed to pass the following:

ORDER

1. Appeal is allowed.

2. The impugned judgment and award of the Tribunal is set aside. The matter is remitted back to the Tribunal for fresh disposal in accordance with law after issuing notice to all the parties to the petition. The insurer on his appearance is at liberty to contest the petition on all grounds likewise, the claimant and the owner are also at liberty to establish their claim in all respects;

3. All the contentions raised by the claimant and the owner are left open;

4. Further, the amount of Rs. 25,000/- deposited by the Appellant-owner before this Court is ordered to be transmitted to the Tribunal for being kept in deposit and to be paid to the successful party in the claim petition.