(2016) 03 KAR CK 0016

In the Karnataka High Court

Case No : MFA Nos. 31572 and 31570/2013 (MV)

The Branch Manager, The National Insurance Co. Ltd. APPELLANT

Vs

Shaik Omar and Others RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, Section 149(2)

Citation : (2016) 03 KAR CK 0016

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Preeti Patil Melkundi, Advocate, for the Appellant; Basavaraj R. Math, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Sujatha, J.—1. These appeals by the insurer are directed against the judgment and award passed by the Motor Accident Claims Tribunal (FTC-I), Raichur.

2. Heard the learned counsel appearing for the parties and perused the material on record.

3. Learned counsel appearing for the appellant would contend that the Tribunal has allowed the claim petition without properly appreciating the material fact that the driver of the vehicle had no valid driving licence at the time of occurrence of the accident. It is also contended that the vehicle involved in the accident was not registered in terms of the Act and as such there was breach of conditions of policy and no liability would have been fastened on the insurer to award the compensation to the claimants.

4. As against this, learned counsel appearing for respondents/claimants would contend that Ex. R3, the document placed by the appellant herein, would categorically speaks that the driver of the vehicle had valid driving licence at the time of occurrence of the accident. It is also submitted that non-registration of

the vehicle would not be a ground for the insurer to get exonerated from the liability of indemnifying the owner as long as the vehicle was covered under the Insurance Policy. More particularly, this defence would not be available to the insurer as per Section 149(2) of the M.V. Act.

5. I have given my considerable thoughts to the arguments advanced by the learned counsel for the parties. The admitted facts are that on 24.08.2011 the claimants who were travelling in the car bearing registration No. KA-10/ BN-429698 met with road traffic accident. The victim Chandpasha died on the spot whereas the other claimants sustained injuries and were treated as inpatients in M.K. Bhandari Hospital, Raichur. It is an admitted fact that Ex. R2, the driving licence of the driver of the vehicle was placed on record by the owner. The challenge in this appeal is based on the charge sheet wherein, the driver of the vehicle was prosecuted for not furnishing the valid driving licence before the jurisdictional police authorities. The standard of proof that has to be produced and examined by the Court in a criminal proceeding is different from that of Motor Accident Claims Tribunal in summary proceedings. It is also evident from Ex. R2 that the driver of vehicle had valid driving licence on the date of the accident. Under such circumstances, the arguments of the learned counsel appearing for the appellant is not worthy of acceptance and requires to be negated.

6. The other contention of the appellant that the vehicle was not registered at the time of accident also lacks merit in view of provisions of Section 149(2) of the Act. This Court in the case of C.B. VIRUPAKSHA alias SHIVU vs. SHIVAKUMAR AND ANOTHER [, 2000 (1) KAR. L.J. 495] while considering the identical question has held thus:

"7. In order to appreciate this submission it is useful to refer to Section 149(2) and (7) of the Act, which reads as follows:

"149(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely,-

(a) that there has been a breach of specified condition of the policy, being one of the following conditions, namely,-

(i) a condition excluding the use of the vehicle,-

(a) for the hire or reward where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(7) No insurer to whom the notice referred to in subsection (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as it referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

8. From the above said section, it is clear that the defences open to the Insurance Company are only those mentioned under Section 149(2) of the Act. The non-registration of the vehicle is not one of the defences enumerated under Section 149(2) of the Act. Therefore, the Insurance Company is not entitled to take defence of the non-registration of the vehicle on the date of the accident. Further, the grounds of defences have been specified in Section 149(2) of the Act and no other ground of defence can be added to the said section. Under subsection (7) of Section 149 of the Act, the Insurance Company is not entitled to avoid its liability to any person entitled to the benefit of any judgment and award referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2) of Section 149 of the Act. Therefore, I am of the view that the Tribunal was not right in absolving the liability of the Insurance Company on the ground that there was no registration of the vehicle as on the date of the accident. When such being the case, the Insurance company shall not be allowed to raise the defence of non-registration as it falls outside the scope of Section 149(2) of the Act in this appeal."

Following the said judgment, I am of the considered opinion that the appeal does not merit consideration.

7. It is also contended by the learned counsel for the appellant that addition of 30% towards future prospects is contrary to the well-settled principles of law accordingly, she seeks to modify the award. She also contends that the judgment of SANTOSH DEVI VS. NATIONAL INSURANCE CO. LTD., [, (2012) 6 SCC 421] which has been referred by the Apex Court in MUNNALAL JAIN AND ANOTHER vs. VIPIN KUMAR SHARMA AND OTHERS [, (2015) 6 SUPREME COURT CASES 347]

has been referred to larger Bench and as such judgment of the Apex Court in Munnalal''s case (supra) is not applicable to the facts of the case. However, there is no embargo for this Court to follow the judgment of the Apex Court in Munnalal''s case (supra) which is holding the field and has been consistently followed by this Court in number of cases while awarding future prospects. Hence, the argument advanced by the learned counsel for the appellant is unsustainable.

8. The learned counsel appearing for the appellant - Insurer would contend that the calculation made by the Tribunal in MVC No. 83/2012 pertaining to MFA No. 31570/2013 to arrive at the loss of dependency is incorrect, it ought to have been Rs. 9,82,800/- instead of Rs. 10,58,400/-. The learned counsel appearing for the respondent has no objection to this calculation.

For the foregoing reasons, MFA No. 31570/2013 is partly allowed reducing the award passed by the Tribunal from Rs. 11,13,400/- to Rs. 10,38,400/- and MFA No. 31572/2013 is dismissed.

The amount in deposit, if any, shall be transmitted to the jurisdictional Tribunal and claimants are at liberty to withdraw the same.