

(2014) 06 KAR CK 0147
In the Karnataka High Court
Case No : M.F.A. No. 21043/2008 (MV)

The Divisional Controller

APPELLANT

Vs

S. Vijayakumar

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 146

Citation : (2014) 06 KAR CK 0147

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Ravi V. Hosamani, Advocate for the Appellant; Ravindra R. Mane, Advocate for R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Challenge in this appeal is to an award passed by the M.A.C.T. holding the appellant-Corporation along with the other respondents in the claim petition, i.e., driver, owner and insurer, respectively of the offending vehicle liable to pay compensation to the claimant.

2. Heard the learned advocates on both sides and perused the record of the case. The point for consideration is:

Whether the Tribunal is justified in holding the appellant jointly and severally liable to satisfy the award?

3. 1st respondent is the owner of the offending vehicle, which had the insurance coverage by the 2nd respondent and was given on hire basis to the appellant, at the relevant point of time. The vehicle having met with an accident on 10.08.2005, the claim petition filed in M.V.C. No. 1270/2005 by the injured was allowed by the M.A.C.T. at Hospet and all the respondents therein were held jointly and severally liable to pay the determined compensation of Rs. 42,000/- with interest at 6% p.a. from the date of petition, till the realisation.

4. Shri Ravi V. Hosmani, learned advocate for the appellant contended that the case is identical to the one considered and decided by the Apex Court in the case of Uttar Pradesh State Road Transport Corporation Vs. Kulsum and Others, and hence, the appeal may be allowed and the liability be shifted to the respondent No. 2 i.e., Insurance Company.

5. Shri Ravindra R. Mane, learned advocate for respondent No. 2, does not dispute the fact that the offending vehicle belonging to the 1st respondent at the time of the occurrence of the accident had the insurance coverage of the 2nd respondent and that the vehicle had been put to use by the appellant on hire basis i.e., when the accident in question occurred. Learned counsel did not contend that there is any violation of the terms and conditions of the insurance policy by the insured.

6. In the case of Kulsum (supra) the vehicle in question was insured by the owner and was given on hire together with its existing and running insurance policy to the State Road Transport Corporation, when the accident in question occurred. The liability to pay the determined compensation having been fastened on the State Road Transport Corporation, the award passed by the M.A.C.T. and upheld in appeal by the High Court, was questioned in the Apex Court. While answering the question of law, Apex Court has held that, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner, since Section 146 of the M.V. Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. Having examined the agreement entered into between the State Road Transport Corporation and the owner of the vehicle which show that the State Road Transport Corporation and the owner had specifically agreed that the vehicle will be insured, but over all control, not only on the vehicle, but also on the driver would be that of the State Road Transport Corporation, it was held that the vehicle having been given on hire by the owner of the vehicle together with the existing and running insurance policy and in view of the terms and conditions, the Insurance Company cannot escape its liability to pay the amount of compensation. The possession of the vehicle being with State Road Transport Corporation, in the aforesaid background, it was held that the liability of Insurance Company is exclusive and absolute and it cannot escape its liability of payment of compensation to third parties or claimants.

7. There being no dispute with regard to factual position, the case being identical, the ratio of the said decision squarely applies to the present case. Hence, the appeal deserves to be allowed.

In the result, appeal is allowed and the impugned award holding the appellant jointly and severally liable to pay the compensation to the claimant is set aside. The owner and insurer of the offending vehicle are jointly and severally liable to pay the compensation to the claimant. Respondent No. 2 having insured the vehicle and the insurance policy being in force shall indemnify respondent No. 1 herein and deposit the award amount in the Tribunal, within a period of six weeks

from today. In the facts and circumstances of the case, the appellant has no liability to satisfy the award.

The amount in deposit, if any, by the appellant, either in the Registry of this Court or before the M.A.C.T. be refunded to the appellant.

No costs.