

(2009) 10 KAR CK 0045
In the Karnataka High Court
Case No : MFA No. 9863 of 2007

The Divisional Manager, The Oriental Insurance Co Ltd.

APPELLANT

Vs

Smt. Minakashi, Smt. Krishnaba, Kum Pooja, Minor rep. by
her Natural Guardian Mother Smt. Minakshi and Smt.
Sailamma

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Citation : (2009) 10 KAR CK 0045

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : R.V. Nadagouda, for the Appellant; Sharanabasappa K. Babshetty,
for R-1 and R-2, V.Y. Kumar and Girish S. Khbashampur, for R-3, for the
Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The Appellant - insurance company has come up in this appeal challenging the liability saddled on it by the II Addl Civil Judge (Sr. Dn.) at Gulbarga (for short, "MACT") in MVC No. 279/2003 dated 26.04.2007. The Respondents 1 to 3 were the claimants before the MACT which petition was lodged by them claiming compensation on account of the death of Mahantappa who died in a road traffic accident on 2.8.2002 at about 12.30 a.m. on Lokapur - Mudhol road. According to the claimants, on the ill fated day, the deceased along with others had been to Saundatti Yellawa temple in a vehicle bearing No. KA-32/M-9423 and while returning, on account of the rash and negligent driving of the driver of the vehicle the accident occurred which resulted in the death of Mahantappa. The Appellant insurance company filed the written statement. In the written statement it is only contended that the deceased was not earning Rs. 3,000/- per month and that the claimants have not produced any documents to prove the income and age and denied the rash and negligent driving of the vehicle by its driver and it also denied the driver having valid driving licence to drive the vehicle on the date of accident and that the insurance company had

issued notice the claimants" advocate to furnish the correct insurance particulars and inspite of the same the owner of the vehicle has not produced the insurance particulars and also sought permission to raise other grounds by making an amendment to the written statement. The owner of the vehicle did not contest the case.

2. Based on the above pleadings, the following issues were framed by the court below:

(1) Whether the Petitioners prove that on 2.8.2002, at about 12.30 midnight when her husband Sri Mahantappa @ Mahantesh was traveling in vehicle No. KA-32/M-942 near Lokapur the driver of the said vehicle drove it in a rash and negligent manner and dashed the vehicle to the tree, thereby Sri Mahantappa @ Mahantesh sustained grievous injuries and died in the hospital during the treatment?

(2) Whether the Respondent No. 2 proves that the Petitioner has filed second claim petition, during the pendency of the claim petition before the claims tribunal at Bijapur?

(3) Whether the Petitioner is entitled for the compensation? If so, to what amount and from whom?

(4) What order or award?

3. In order to prove the respective contentions, the widow of the deceased Mahantappa was examined as PW1. She has been cross-examined. In her cross examination, a suggestion was put by the insurance company advocate stating that the deceased and others had taken the vehicle on hire hut she has denied the said suggestion. It was also suggested in the statement given before the police, she has been stated that the vehicle was taken on hire. The said question is also denied by PW1. Thereafter on behalf of the insurance company, one Kembhavi has been examined as RW1. He only contends that the vehicle was taken on hire to go to Yellama temple. In the cross examination he has admitted that his evidence is based on the police records and not on his personal views. The tribunal considering the evidence let in by the parties held that the claimants are entitled for a sum of Rs. 3,58,600/-with interest at 6% per annum and the insurance company has to satisfy the award.

4. Being aggrieved by the same, the present appeal is filed.

5. The main contention of the learned Counsel in the appeal before us is that the tribunal has committed an error in fixing liability on the insurance company and since the vehicle in question was taken on hire by deceased and others and that the hiring of the vehicle by the owner of the deceased and others was contrary to the terms and conditions of the insurance policy issued by the Appellant company and in such an event the risk of such passenger has not been covered, therefore, it has no liability. According to him, in view of the FIR produced by the claimants the case of the Appellant has been proved, therefore the appeal has to

be allowed. Placing reliance on the judgment of the Supreme court in *Oriental Insurance Company v. Premalatha Shukla* reported in AIR 2007 BCW 3591 contends that when a document has been admitted without any objection, the contents of the said document is said to have been proved. Therefore, relying upon paragraph 15 of the judgment Mr. Nadagouda contends that it has been proved by the insurance company that the risk of the deceased has not been cohered under the policy in view of the breach of the terms and conditions of the policy.

6. Per contra, learned Counsel for the Respondents/claimants contends that the judgment relied upon by the Appellants counsel has no application to the facts and circumstances of this case. According to the counsel for the Respondents, the insurance company has not raised in its pleadings that the vehicle was given on hire and that there was breach of terms and conditions of the policy as a result of which the insurance company is not liable to satisfy the award. She further contends that when there is no proper pleading and issue, for the first time in the appellate court the Appellant cannot contend that the Appellant is not liable to satisfy the claims only relying upon FIR, the contents of which has not been admitted by the 1st claimant. She has been examined by PW1. She further contends that though the insurance company has cross examined PW1, the insurance company is unable to get any proper answer from PW1 and that evidence of RW1 is of no helpful to the insurance company as he has no personal knowledge. According to the counsel for the Respondents that the FIR has not been lodged by the claimants, the person who lodged the FIR was the best person to be examined by the insurance company. When the insurance company has not raised any pleadings nor let in evidence to prove that the vehicle in question was given on hire, relying upon the judgment of Apex Court which facts are not applicable to the facts of the case, requests the court to allow the appeal. To support her case, she has relied upon the Division Bench judgment of this Court in *Ramakrishna Reddy Vs. The Manager, Purchase, Hindustan Machine Tools Limited and Another*, wherein their Lordships have held as hereunder:

19.1 The claimants are not litigants by choice, but are constrained to approach the tribunal because of the death of the breadwinner or injury to self and because the owner and insurer of the vehicle involved, fail to pay the compensation, The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle and they solely depend upon the policy for these particulars. The insurer should therefore verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the claim or not and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurer were to file "play it safe" written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of "DENY

Everything and Await the Award Sandrome" and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies, who refuse to recognize their statutory obligations to third parties, under the insurance policies issued to the insured.

20. Coming back to the case on hand, on the pleadings, issue and evidence, we hold that the tribunal was justified in making the insurer liable for the compensation amount. If the insurer wanted to avoid liability, it ought to have raised a specific plea and ensured that an appropriate issue was framed so that the attention of the claimant and insured was focussed on the ground on which the insurer sought to avoid liability, so that they could let in evidence to show that the insurer is liable. We therefore answer the first point in the negative and against the insurer.

7. In view of the specific findings of Division Bench of this Court in paragraph 20, it was imperative on the part of the insurance company to raise a specific plea and ensure that a proper issue was framed so that the contention of the claimants and insurer was focussed on the ground on which insurer sought to avoid liability. From the discussion, it is clear the facts of this case and facts involved in RAMAKRISHNA's case are similar. The insurance company in a half hearted manner has filed the written statement denying its liability on the ground that the driver had no valid licence, thereafter from the FDR said to have been lodged, is trying to shift its responsibility to satisfy the award before the appellate court. The Appellant - insurance company which has issued the policy to the owner instead of honouring the policy trying to avoid its liability by taking clue from the document which was not fixed by it at a proper time. When there was no pleading and issue before the court, we cannot consider the arguments advanced by the learned Counsel for the Appellant.

8. Mr. Nadagouda learned Counsel for the Appellant contends that the question now raised by the Appellant is a question of law and can be raised even at the stage of appeal. We are unable to accept the arguments as whether the vehicle was given on hire by the owner to the deceased and others is not a question of law, it is a question of fact, fact had been proved, then the question of liability could have been considered by us. When there is no foundation laid by the Appellant in regard to its liability on the ground of breach of terms and conditions of the policy, we cannot permit the Appellant to raise the ground of liability. Therefore, we have to reject the contentions raised by the Appellant.

9. In the result, the appeal is dismissed with cost of Rs. 5,000/-.

The amount, if any, in deposit is ordered to be sent to the tribunal.