

(2014) 10 KAR CK 0061

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 31729 of 2009 [MV]

The Manager, IFFCO TOKIO General Insurance Co. Ltd.

APPELLANT

Vs

Hanamant

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2014) 10 KAR CK 0061

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Preeti Patil, Advocate for the Appellant; Sudhirsingh R. Vijapur, Advocate for the Respondent

Judgement

A.S. Pachhapure, J.—The appellant/insurer has challenged its liability to pay the compensation awarded by the Tribunal for the injuries sustained by the 1st respondent in the motor vehicle accident.

2. The facts reveal that on 18.01.2007 when the injured 1st respondent herein was travelling in the passenger auto bearing reg. No. KA 29-7644, the driver drove it in a rash and negligent manner and as a result, the said auto turtled. Thereby, the 1st respondent herein suffered multiple fracture and was treated in the hospital. He suffered disability and therefore made a claim for compensation.

The appellant disputed its liability on the ground that the driver did not hold a valid driving license. In relation to the other grounds, the Tribunal after recording the evidence has granted a sum of Rs. 2,41,000-00 with interest at 8% p.a. as compensation and the appellant was directed to indemnify the same. Aggrieved by the liability imposed, the present appeal is filed.

3. I have heard learned counsel for both the parties.

4. The point that arises for my consideration is;

Whether the appellant proves the breach of policy condition and the fact that the driver of the passenger auto was not holding valid driving license at the time of

the accident?

5. It is the contention of learned counsel for the appellant that the driver of the passenger auto was not holding valid driving license at the time of the accident and therefore, the insurer is not liable to indemnify the owner.

On the other hand learned counsel for respondent No. 1 supports the Judgment and Award of the Tribunal.

6. Reliance was placed on the decision of this Court reported in Yashodhara B. Shetty Vs. United India Insurance Co. Ltd. and Others, ; wherein the facts reveal that the cleaner of the vehicle was driving the vehicle and an accident occurred. At that point of time, the question was about the license to drive. As the owner did not take any steps to prove that the driver i.e., the cleaner was holding a valid driving license, the liability was imposed on the owner of the vehicle. The fact in the aforesaid case is altogether different from the facts on hand. It is not in dispute that the passenger auto was driven by its driver and the question is as to whether he did hold a valid license to drive the said auto or not.

7. The insurer is liable to pay the compensation in case of an accident is occurred. To seek exemption, it is the burden of the insurer to prove that there are breach of policy condition. It is the condition in the insurance policy that the driver shall hold an effective and valid driving license and if he was not holding any such license on the date of the accident, it is for the insurer to establish this fact. The appellant could have moved an application before the Tribunal calling upon the owner to produce the license or its particulars. Even otherwise, it would have taken steps to secure the driver before the Court and to produce the license. No such steps have been taken by the appellant/insurer. What has been done is R.W.1 is examined and in the oral evidence, it is stated by him that the driver was not holding a license. This oral evidence is insufficient to conclude that there was no license to drive the vehicle. That apart, no enquiry has been made by the appellant with the Transport Authority to know as to whether the driver was holding the license or not. In the absence of which, the breach of policy condition has not been proved by the appellant and it is for this reason, the Tribunal has fastened the liability on the insurer. Except this contention, no other contentions have been raised. Therefore, the point is answered in negative.

Consequently, the appeal fails and it is accordingly dismissed. The amount in deposit in this Court be transmitted to the Tribunal.