

(2008) 03 KAR CK 0033

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4954 of 2004

The Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Maresh and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Citation : (2009) ACJ 2804 : (2008) 119 FLR 246 : (2008) ILR (Kar) 3262 : (2008) 3 KCCR 1852

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : B.C. Shivanegowda, for the Appellant; M.R. Shashidhar, for R-1, for the Respondent

Judgement

K. Ramanna, J.—This appeal is filed by the insurer against the judgment and award passed by the Commissioner for Workmen's Compensation, Davanagere challenging the liability fastened on the appellant to pay compensation to respondent No. 1.

2. The brief facts of the case are that the respondent-1-claimant was the victim of road accident that occurred on 21-2-2002. According to the claimant, he was working as a loader in the lorry. On 21-2-2002 on account of rash and negligent driving by the driver of the lorry, the said lorry dashed against a mini bus which was in a stationed position. Consequently, the claimant sustained injuries to his legs, hips, ankle and foot. He had taken treatment both as in-patient and out-patient. The Commissioner, after considering the evidence on record, awarded compensation of Rs. 1,28,280/- to the claimant--respondent-1 and fastened the liability on the insurer-appellant herein to pay the same. Being aggrieved, the insurer has filed this appeal challenging the liability fastened on it, mainly on the ground that it had issued policy in favour of respondent-3; that the claimant is said to have employed under respondent-2 and therefore the appellant is not liable to indemnify respondent-2 in whose favour it has not issued any insurance policy.

3. The learned Counsel for appellant contended that since the policy has not been transferred in the name of second respondent, even though the policy was in force, the question of liability to pay the award amount does not arise. At the most, the Court can direct the appellant to pay and recover the said amount. In support of the said contention, learned Counsel for the appellant relied on the decision in the case of Rikhi Ram and Another Vs. Smt. Sukhrania and Others, wherein the Full Bench of the Apex Court has held thus:

Motor Insurance - Transfer of vehicle - Transfer of certificate of insurance - Liability of insurance company - Motor Cycle was transferred by the insured prior to the date of accident but no intimation of transfer was given to insurance company - Whether liability of insurance company ceases so far as third party is concerned when the vehicle is transferred and no intimation is given to the insurance company - held that insurance company may recover the amount paid by it either from the insured or from the transferee of the vehicle.

Therefore, it is submitted that the appeal be allowed by setting aside the judgment and award passed by the Commissioner.

4. On the other hand, it is argued by the counsel for respondent-2 that respondent-2 has purchased the said vehicle from respondent-3 and the respondent-1-claimant was working under him as a cleaner. The policy was in force as on the date of accident covering the risk of both the cleaner and the driver as well as third party and in view of the fact that the policy issued by the insurer-appellant in favour of respondent-3-the erstwhile owner of the vehicle in question was in force as on the date of accident, mere non-transfer or non-issuance of intimation to the insurer-insurance company, cannot absolve the liability of the appellant to pay the compensation. Therefore, he submits that judgment and award passed by the Commissioner does not require any interference.

5. I have carefully examined the material placed on record. It is an undisputed fact that the appellant had issued an insurance policy in respect of vehicle in question in favour of respondent-3 and the same was in force as on the date of accident. The respondent-3 is said to have sold the vehicle in question in favour of respondent-2. The claimant-respondent-1 is working under respondent-2. But the fact of transfer of ownership in respect of vehicle in question is not intimated to the insurer of the vehicle either by respondent-2 or by respondent-3. The policy issued by the insurer-appellant continues to stand in favour of respondent-3 as on the date of accident. Even after the said transfer of ownership of said vehicle in question by respondent-3 in favour of respondent-2. There is no relationship of employer and employee between respondent-3 and respondent-1. The respondent-1 is said to have been working under respondent-2 and the salary was also paid by him only. As such, the order of Commissioner directing the appellant to indemnify the respondent-2 is not correct. However, In view of the law laid down by the Apex Court in the aforesaid decision, that appellant as insurer of the vehicle, should not be benefited or immuned from liability to pay

compensation to the victim of the accident, for the mistake committed by the insured and the victim of the accident should not be penalised and he cannot be denied his right to recover the compensation from the insurer. This Court is bound to follow the principles of law laid down by the Apex Court. Therefore appellant shall pay and recover the said amount either from respondent No. 3 or from respondent-2.

6. Further, there is no dispute with regard to quantum of compensation awarded by the Commissioner. I have carefully examined about the salary paid by the employer to respondent-1. There is no error in the Commissioner taking income of the respondent-1 at Rs. 2,400/- per month to quantify the compensation. So also, his loss of earning capacity at 40% and also his age at 21 years at the time of accident. Therefore, I do not find any good reasons to interfere with the quantum of compensation awarded by the Commissioner.

However, the Commissioner has committed an error in awarding interest at 12% p.a. after 30 days from the date of accident. The respondent-1 is entitled to interest at 12% p.a. after 30 days from the date of passing of the award.

7. For the foregoing reasons, this appeal is allowed in part. The judgment and award passed by the Commissioner is hereby modified. The compensation awarded by the Commissioner is however confirmed but the respondent-1 is entitled to interest at 12% p.a. only after 30 days from the date of passing of the award i.e., from 28-5-2004 till the date of deposit made by the appellant. The amount in deposit shall be transferred to the Commissioner for Workmen's Compensation, Davanagere for payment. The appellant is entitled to refund of excess amount if any deposited by it. It is further open for the appellant to recover the said award amount paid to respondent-1 either from respondent-3 or respondent-2.