

(1983) 12 KAR CK 0007
In the Karnataka High Court

The National Insurance Co. Ltd.

APPELLANT

Vs

H.N. Rama Prasad and Others

RESPONDENT

Date of Decision : 13-12-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 96 (2)

Workmens Compensation Act, 1923 — Section 95 (1)

Citation : (1985) 1 ACC 38 : (1985) ACJ 864

Hon'ble Judges : R.S. Mahendra, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

G.N. Sabhahit, J.—This appeal by the insurer is directed against the judgment and award dt. 11-12-1979, made by the Claims Tribunal, Kolar, in M.V.C. No. 4 of 1978 on his file, awarding Compensation of Rs. 76,800/- to the claimants and making respondents 1, 3, 5 and 6 in the petition, jointly and severally liable to pay the same and limiting the liability of the insurance company at Rs. 50,000/-.

2. It is the case of the claimant that he was employed by the third and fifth respondents in the petition and that when he was in the course of the employment travelling in Matador van bearing No. MCD 7 3, on 31-8-1977, the van met with an accident as a result of which the right leg of the claimant was fractured and ultimately he had to wear calipers. He could not work as before. He claimed Rs. 2,40,000/- as compensation from the respondents. Respondents resisted the claim. According to them, the accident was not result of rash and negligent driving of the tempo van and that the compensation claimed was excessive. The Insurance company also took up a contention that the company was not liable as the insured was not liable.

3. The Tribunal raised the following issues as arising for its consideration:

(1) Whether the accident was on account of the rash and negligent driving by R-1 ?

(2) Whether the petitioner is entitled to any compensation and, if so, from whom

and how much ?

(3) What order?

The Tribunal, appreciating the evidence on record, found that the accident was the result of rash and negligent driving of the van and in that view awarded, compensation as stated above. Aggrieved by the said Judgment and award, the insurance company has instituted the above appeal.

4. The learned Counsel for the insurance company strenuously urged before us that the liability of the insurance company if at all should be limited to what is due under the Workmen's Compensation Act. As against that the learned Counsel appearing for the cross-objectors contended that the amount of compensation awarded was on the higher side.

5. The preliminary point that arises for our consideration is whether the cross objections could be raised in an appeal filed by the insurance company who has got limited scope for contesting the claim petition u/s 96(2) of the Motor Vehicles Act.

6. It is no doubt true that scope of contentions to be raised by the Insurance Company is limited to what is contained in Section 96(2) of the Motor Vehicles Act (hereinafter referred to as the Act). No contention can be raised by it in regard to the quantum of compensation awarded by the Tribunal. There is nothing on record to show that the Insurance company took special permission before the Tribunal to contest on all grounds available to be owner. In fact, owner was a party and he contested the petition. The contention of the cross-objectors that the quantum of compensation awarded is on the higher side cannot therefore be raised in an appeal instituted by the insurance company in which the main ground made out is that its liability should be confined to what is contained in the Workmen's Compensation Act. The Supreme Court of India, in the decision in Pannalal Vs. State Bombay and Others, has ruled inter alia that:

Order 41 Rule 22 permits, as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is inter-mixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being reopened between the objecting respondent and other respondents, that an objection under Order 41, Rule 22 can be directed against the other respondents. The use of the word "Cross objection" in Order 41 Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. That legislature also wanted to give effect to the view that in exceptional cases an objection can be preferred by a respondent against a co-respondent, is indicated by the substitution of the word "appellant" in third paragraph by the words "the party who may be affected by such objection".

7. In the instant case, the appeal by the insurer is limited to the extent of its

liability. As stated above, the insurance company cannot question the quantum of compensation awarded. That being so, the question of quantum of compensation would not arise in an appeal instituted by the insurer. Therefore, the cross-objections in this behalf are not tenable. Moreover, it is seen from the cross-objection that the person against whom the cross-objections are made viz., claimant, is not added as a party in the cross-objections. Hence, the alternative request of the cross objectors that the cross-objections be treated as an appeal cannot also be granted.

8. Moreover, the request to convert the cross-objections into an appeal is made after years of delay. It is barred by time. Hence, the precious right vested in the claimant cannot be defeated by allowing the cross-objections being treated as appeal, after years of delay. Hence, the request for treating the cross-objections as appeal is hereby rejected and the cross objections without more, are liable to be dismissed and we dismiss the same.

9. Adverting now to the ground made out in the appeal by the insurer, the only ground made out is that the liability of the insurer should be confined to what is contemplated under the provisions of the Workmen's Compensation Act, Section 95(1) in the proviso states that in respect of the death arising out of and in the course of employment of an employee, or in respect of the bodily injury sustained by such an employee, arising out of and in the course of his employment, then the liability of the insurance company is confined to what is contained under the Workmen's Compensation Act. Thus, reading Section 95(1) with the proviso it becomes clear that in case of death or bodily injury to an employee in the course of his employment the liability of the insurance company is limited to what is contained in the Workmen's Compensation Act, under the Act Policy. Under the Workmen's Compensation Act for, permanent total disablement, an employee drawing salary of Rs. 500/- to Rs. 600/- is granted Rs. 30,240/-. The evidence on record discloses and it is also found by the Tribunal as a matter of fact, that the disablement in the instant case is only to the extent of 60%. Therefore, the liability of the insurance company would be limited to Rs. 18,144/- from out of the total compensation awarded by the Tribunal to the claimants.

10. In the result, therefore, the appeal is partly allowed. While holding that the insurer is liable to pay compensation, we limit the liability of the insurer to Rs. 18,144/- along with interest at 6% per annum from the date of the petition till payment and also the costs of claimants before the Tribunal. The rest of the amount awarded shall be paid over by the rest of the persons made liable by the Tribunal in its judgment. No costs of this appeal.