(2005) 03 KAR CK 0008

In the Karnataka High Court

Case No : MFA No. 921 of 2001

The National Insurance Co. Ltd. APPELLANT

Vs

Sri Mukthar Hussain and Sri M.S. Das RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2005) 03 KAR CK 0008

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : P.B. Raju, for the Appellant; K.S. Desai, for R2 and H.C. Kavitha, for R1, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The petitioner in MVC No. 51/95 sustained personal injuries in the accident. The Tribunal has awarded compensation of Rs. 14000/- with interest at 6% from the date of the petition till payment and directed the owner and insurer to pay the compensation, The insurer is in appeal.

2. The insurer is served and remained unrepresented before the Tribunal, The owner had filed his written statement contending that the vehicle is insured with the appellant.

3. In this appeal, the insurer-appellant contends that the vehicle is not covered by insurance. Therefore the insurer is not liable to pay the compensation;

4. The award made by the Tribunal against the appellant "is an exparte award. The appellant has twin remedy of filing an application under Order 9 Rule 13 before the Tribunal for setting aside the exparte award or to file an appeal.

5. In the appeal it is permissible for the appellant to show that the award/decree made is bad in law and liable to be set aside on the basis of whatever material available on record. It is also permissible for the appellant to explain the reason

for his non-appearance and file written statement disclosing triable defence. In such a case if the appellant is able to establish sufficient cause for his non-appearance, he would be entitled to the relief of remand, if there is triable defence.

6. The appellant has failed to show that the award passed is bad in law. The appellant has not explained the reason for his absence and filed the written statement disclosing his defence plea for consideration. In the appeal grounds it is only contended that there is no policy issued for the vehicle in question.

7. The appellant further contends that the* insured has made false statement about the existence of insurance and misrepresented the facts before the Tribunal. Therefore, on the ground of fraud it is argued that the award is to be set aside.

8. The false or incorrect submissions made by the insured if any cannot be a ground to hold that the petitioner has played fraud on the court. The appellant/ insurer was not prevented from appearing before the court by anybody. He was duly served. On account of its own default, the appellant has suffered the award Therefore, the contention that the award passed is under fraudulent circumstances is untenable.

9. It is needless to say that if the owner has made deliberate misrepresentations about the insurance, the insurer is entitled to proceed against the owner for reimbursement in accordance with law. Accordingly, the appeal is dismissed.