(2012) 01 KAR CK 0250

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2733 of 2010 (MV)

The National Insurance Co. Ltd. APPELLANT

Vs

T.A. Radha and Others RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 01 KAR CK 0250

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

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant;

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. The Insurer has preferred this appeal challenging The liability imposed on it to pay the compensation to Respondents 3 to 6 herein.

2. In an accident that occurred on 24.11.2007. Sheshachala the rider of the Motor Cycle bearing No. KA-18-K-492 died due to the rash and negligent driving of Tata Sumo vehicle bearing No. MH-09 Z-5777 which came from the opposite direction and said to have hit the deceased, the rider of the motor cycle. Respondents 1 to 5 herein are the legal representatives of the deceased who made a claim for compensation u/s 166 of the Motor Vehicles Act (hereinafter called as ''the Act'' for short) impleading the driver (Respondent No. 6 herein), the owner (Respondent No. 7 herein) and the appellant insurer as Respondent No. 3 before the Tribunal as party.

During the pendency of the proceedings and even before the appearance of the owner, a Memo was filed to delete Respondent No. 2 owner. Ultimately, the evidence was led by examining PWs. 1 to 3 and in their evidence the documents Exs.P.1 to 31 were marked. The insurer produced Ex.R.1 the copy of the Insurance Policy which was admitted in evidence with consent. The Tribunal after hearing the counsel and on appreciation of the material on record allowed the claim petition by granting compensation of Rs. 7,61,516/- with interest at 6% p.a. directing the appellant insurer to pay the same to the legal representatives of the deceased. Aggrieved by the award, the present appeal has been filed.

3. I have heard the learned counsel for the appellant and the respondents though served are unrepresented.

4. The liability to pay the compensation is through a contract between the owner of the vehicle and the insurer subject to the terms and conditions incorporated in the Insurance Policy. It is only when the owner is held responsible to pay the compensation, it is the duty of the Insurance company to indemnify the owner to pay the compensation awarded. Unfortunately, the claimants though at the initial stage impleaded the owner as Respondent No. 2 before the Tribunal, filed a Memo and got deleted him even before he appeared before the Tribunal. So, when the contract was in between the owner and the insurer and the owner was not a party to the proceedings and when the owner was not made liable to pay the compensation, the question of indemnifying the owner does not arise for consideration. In these circumstances, the award of the Tribunal imposing the liability upon the Insurance Company (the appellant herein) is both erroneous and illegal

5. Furthermore, it has to be observed that in case, if the claimants implead the owner as party to the proceedings and after remittal an award is passed granting compensation holding the owner and the Insurance Company liable to pay the same, the Insurance Company shall not be made responsible to pay the interest for the period from the dale of deletion of the owner as party from the proceedings till the date of award. In this context, the judgment and award of the Tribunal will have to be set abide remitting back the matter to the Tribunal to dispose of the case in accordance with law, in the light of the observations made above.

6. In the circumstances, the appeal is allowed. The judgment and award of the Tribunal dated 09-12-2009 are set aside. The matter is remitted back to the Tribunal to dispose of the case in accordance with law by affording an opportunity to the claimants to implead the owner as a party and to pass appropriate orders in the light of the observations made above. The parties are at liberty to lead further evidence, if any. The amount in deposit shall be refunded to the insurer.