
(1972) 08 KAR CK 0012
In the Karnataka High Court
Case No : Misc. First Appeal No. 452 of 1970

The Northern India General Insurance Co. Ltd.	APPELLANT
Vs	
L. Krishnan and Others	RESPONDENT

Date of Decision : 25-08-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 C, 110 D, 96 (2)

Citation : AIR 1973 Kar 107 : AIR 1972 Kar 107 : (1972) 2 MysLJ 324

Hon'ble Judges : S.R. Range Gowda, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : H.B. Shankrappa, for the Appellant; K.S. Sathyamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekhar, J.—This appeal u/s 110-D of the Motor Vehicles Act. 1939, (hereinafter referred to as the Act), is from a judgment of the Motor Accidents Claims Tribunal, Shimoga, (hereinafter referred to as the Tribunal), awarding compensation to respondent 1 herein for the death of his son in an automobile accident.

2. The appeal is by the insurer of the motor lorry which caused the death of respondent 1's son. Neither the owner nor the driver of that lorry, has presented any appeal from that judgment of the Tribunal. In the Memorandum of appeal, the appellant has urged grounds which relate to negligence of the driver of the lorry and the quantum of compensation awarded by the Tribunal

3. Before going into the merits of those grounds, the appellant who was the insurer, should satisfy that it is open to him to urge those grounds. In *Indian Mutual General Insurance Society Ltd. v. Helen*. 1971 (1) Mys LJ 300 : AIR 1971 Mys 207 this Court held that an insurer cannot urge in an appeal any ground which he could not urge before the Tribunal. Sub-section (2) of Section 96 of the Act provides, inter alia, that an insurer to whom notice of bringing of any action

for compensation in respect of third party risks is given shall be entitled to be made a party to that action and to defend it on any of the grounds specified in Clauses (a) to (c) of that subsection. Those grounds do not include negligence of the driver of the vehicle insured or the quantum of compensation for death or injury caused by, or arising out of, the use of that vehicle. In *Indian Mutual General Insurance Society's* case, this Court referred to Sub-section (2) of Section 96 and held that it is not open to the Insurer to urge before the Tribunal that there was no negligence on the part of the person driving the vehicle that caused death or injury or that the amount of compensation claimed is excessive.

4. However, Mr. H. B. Shankarappa, learned counsel for the appellant referred to the following observations of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*,

"..... the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so. all defences open to the assured can then be urged by him".

5. Following the above observations of the Supreme Court, this Court observed in *Concord of India Insurance Co. v. Machado*. AIR 1966 Mys 346 that Section 96 of the Act preserves for the insurer the right to defend the action in the name of the assured and to raise all defences open to the assured if that right has been preserved to him under the Insurance Policy.

6. Relying on the above observations, Mr. Shankrappa, contended that it was open to the appellant to urge in this appeal all the contentions which the insured had unsuccessfully urged before the Tribunal,

7. From the above decisions it is clear that the insurer can urge all the defences open to the insured, only when the insurer defends the action in the name of the insured. But, in the present case it has not been shown that before the Tribunal the appellant defended the action in the name of the insured. On the other hand, the insured (the owner of the lorry) and the driver of the lorry who were respondents 1 and 2 before the Tribunal had filed their objections and the appellant had filed a separate statement of objections. Unless the appellant had defended before the Tribunal, the action in the name of the insured, the only defences which it (the appellant) could urge before the Tribunal and which it can urge in this appeal, are those specified in Clauses (a) to (c) of Sub-section (2) of Section 96 of the Act.

8. However, Mr. Shankrappa contended that Sub-section (2-A) inserted in Section 110-C of the Act by the Motor Vehicles (Amendment) Act. 1969, enables the insurer to defend an action for compensation on all or any of the grounds available to the person against whom the claim has been made and that in on appeal u/s 110-D the insurer can urge all the grounds that could be urged by the person against whom the claim has been made, had he preferred an appeal. Sub-section (2-A) of Section 110-C reads :--

"(2-A) Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable to in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all, or any of the grounds that are available to the person against whom the claim has been made." The above sub-section empowers an insurer to contest the claim for compensation on all or any of the grounds that are available to the person against whom the claim has been made, if the following two conditions are satisfied :

"(i) Collusion between the person making the claim and the person against whom the claim is made; or the person against whom the claim is made, has failed to contest the claim; and

(ii) The Tribunal has, for reasons recorded in writing, directed that the insurer shall be impleaded as a party to the proceeding".

9. Unless the above conditions are satisfied, the insurer cannot contest the claim on any ground other than those specified in Clauses (a) to (d) of Sub-section (2) of Section 96 of the Act.

10. Mr. Shankarappa contended that the above conditions were satisfied in the present case. According to him, there was collusion between respondent 1 (who claimed compensation) on the one hand and respondents 2 and 3 (the owner and the driver of the lorry) on the other.

11. There is absolutely no material to infer such collusion. The owner and the driver of the lorry who were respondents 1 and 2 before the Tribunal, had filed their objections to the petition and resisted the claim. The driver of the lorry gave evidence to the effect that the accident was not due to his negligence .

12. In the present case it cannot also be said that the person against whom the claim was made, failed to contest the claim. As seen earlier, the owner and the driver of the lorry did contest the claim and also adduced evidence in support of their defence. The appellant (the insurer) had been impleaded as a party along with the owner and the driver of the lorry when the petition was presented, and this is not a case in which the Tribunal directed that the insurer should be impleaded as a party. There was no occasion for the Tribunal recording its reasons in writing for directing the insurer to be impleaded as a party.

13. Thus, none of the conditions specified in Sub-section (2-A) of Section 110-C has been fulfilled in this case. Hence, the appellant cannot be permitted to urge in this appeal that there was no negligence on the part of the driver of the lorry or that the amount of compensation awarded by the Tribunal, was excessive. In

the memorandum of appeal, the appellant has not urged any of the grounds specified in Clauses (a) to (c) of Sub-section (2) of Section 96 of the Act.

14. As the appellant cannot be permitted to urge any of the grounds stated in the memorandum of Appeal, this appeal fails and is dismissed in limine and with costs. Advocate's fee Rs. 100/-.