

(1981) 07 KAR CK 0016
In the Karnataka High Court
Case No : Misc. First Appeal No. 594 of 1980

The Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Tippanna Gadageppa Kundgol and Another	RESPONDENT

Date of Decision : 07-07-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 B, 95 (4), 96 (1)

Citation : (1982) ACJ 102 : AIR 1982 Kar 150 : (1983) 54 CompCas 356(1)

Hon'ble Judges : M. Nagappa, J;G.N. Sabrahit, J

Bench : Division Bench

Advocate : B.V. Acharya, for the Appellant; Patel D. Kari Gowda, for B.P. Krishna and P.R. Ramesh, for B.T. Hegde, for the Respondent

Judgement

M. Nagappa, J.—This appeal by the insurer is directed against the judgment and award dated 18-12-1979 passed by the Motor Accidents Claims Tribunal, Dharwad, in M. C. (M. V. C.) No. 76 of 1978 fixing the liability on the Insurance Company along with the owner and the amount awarded to be paid by the Insurance Company under S. 110B of the Motor Vehicles Act.

2. The only point that was canvassed for our consideration by the learned counsel for the appellant is that the vehicle was not insured on the date of accident, namely, on 11-2-1978. If that is so, the Tribunal was not justified in fixing the liability on the Insurance company.

3. A perusal of the records indicates that the Insurance company has issued renewal receipt on 14-2-1978 after having received the premium due there under on 13-2-1978 and with effect from 10-2-1978 for a period of one year thereafter. The accident happened on 11-2-1978. Therefore, it is clear that the policy was in force on the date of the accident. in which case the Insurance company cannot escape its liability to pay the amount in question. S. 96 (1) of the M. V. Act, 1939, reads thus:

" If, after a certificate of insurance has been issued under sub-section (4) of

Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

3. Section 96 (1) deals with the duty of the Insurer to satisfy judgments against persons insured in respect of third party risks. The provisions of the section have to be construed so as to ensure the object of Chapter VIII. The said chapter makes provision for insurance of vehicles against third party risks i. e. its provision ensures that third parties who suffer on account of user of motor vehicle would be able to get damages for body injuries or damage to property suffered as a result of accident by use of Motor Vehicle and that their ability to get damages should not be made dependent on the financial condition of either of the driver of the vehicle whose user led to causing of the injury or the financial capacity of the owner of the vehicle who permitted such user. Therefore, the right of the third parties to get compensation being a statutory one is independent of the contractual right and obligation between the insurer and the insured. The liability of the insurer to third parties being statutory, when a third party suffers injury or damages due to the use of Motor Vehicle, the right. flows from the statute and is not contractual.

4. Therefore, S. 96 (1) of the Act, with a view to protect rights of third parties provides that the insurer is bound to indemnify the insured, so far his liability to third parties is concerned as per policy issued, even though insurer was entitled to avoid or cancel the policy for breach of certain restrictions, conditions and limitations contained therein. In the instant case, the case of the insurer was that the vehicle in question had not been insured with it at the time of the accident. But as already indicated the Insurance Company has issued renewal insurance, receipt on 14-2-1978, having received the premium on 13-2-1978 giving effect from 10-2-1978 for a period of one year. So, the renewal certificate was very much in force on the date of accident i. e., 11-2-1978. Under the circumstances the insurer may be entitled to proceed against the insured of the policy, either to avoid or cancel or have avoided or cancelled the policy, the insurer is bound by the provisions of S. 96 (1) of the Act, to pay the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under. So, there is no force in the contention of the learned counsel for the Insurer appellant, with regard to the finding of the tribunal fixing the liability on the Insurance Company.

5. In the result, for the reasons stated above, this appeal fails, and the same is dismissed, No costs,
6. Appeal dismissed.