

(1993) 06 KAR CK 0016

In the Karnataka High Court

Case No : Misc. First Appeal Number 216 of 1988

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Gowramma and others

RESPONDENT

Date of Decision : 23-06-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 95 (2) (b), 95 (2) (b) (i)

Citation : (1994) ACJ 63 : AIR 1994 Kar 29 : (1993) ILR (Kar) 2004 : (1993) 3 KarLJ 355

Hon'ble Judges : M.M. Mirdhe, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; Smt. Nagarathana for H.K. Vasudeva Reddy, for the Respondent

Judgement

Ramakrishna, J.—The appellant-insurer has challenged in this appeal the judgment and award dated 8-9-1987 made in M. V.C. No. 186 of 1985 by the District Judge and Motor Accidents Claims Tribunal, Mandya, by which he awarded compensation in a sum of Rs. 71,600/- together with interest at the rate of 6% per annum from the date of petition till payment.

2. The appellant has taken two specific grounds in this appeal. They are : (1) Respondent 8 Siddappa obtained a policy of insurance in respect of the vehicle in question by misrepresentation though, in fact, he was not the owner thereof on the date of the policy much less on the date of accident. Therefore, the appellant is not liable to pay any compensation awarded against such a policy. (2) Under Sec. 95(2)(b)(i) of the Motor Vehicles Act, 1939 (the Act for short), the liability of the insurer is limited to Rs. 50,000/- as it is a statutory liability and any amount in excess of the said amount shall be paid by the owner of the vehicle. Therefore, the finding of the Tribunal that the appellant shall make good the entire amount of compensation awarded is not legal and proper.

3. The brief facts of the case culminating in the judgment and decree against the appellant are as follows :--

On 2-5-1985 at about 6 P.M., Kempegowda, husband of respondent-1 Gowramma, claimant-1 in the tribunal, was bringing hay in the push cart to his village. The said Kempegowda and another person were pushing the cart from behind. When they reached near Chillapura gate, the bus called Siddalingeswara Motor Service bearing registration No. TNU 443 came from behind with a great speed and dashed against Kempegowda resulting in his instantaneous death. His wife, respondent-1, and children, respondents 2 to 7, claimed compensation before the Tribunal in a sum of Rs. 1,35,000/-for the death of the said Kempegowda.

4. Despite service of notice, the owner and the driver of the vehicle in question did not choose to appear before the Tribunal and contest the claim. Only the Insurance company, appellant herein, contested the claim by filing written statement.

5. The specific stand taken in the written statement was that the bus TNU 443 stood in the name of H. V. Hanumantha Shetty s/o Venkata Shetty with effect from 27-8-1981, but the Insurance Policy on the bus was issued in the name of Siddaiah, respondent-8 herein, who had no insurable interest since the vehicle did not stand in his name. Therefore, the insurance company is not liable to make good the compensation. The age of the deceased Kempegowda and the loss of dependency claimed was also disputed.

6. Based upon the pleadings, the Tribunal framed the following issues:--

(1) Whether the petitioners prove that the accident was due to the actionable rashness and negligence of the driver of the bus bearing No. TNU 443.

(2) If answer to issue No. 1 is in the affirmative then to what compensation the petitioners are entitled to.

(3) Whether the Insurance Company-R3 proves that Siddappa R 2 is not the owner of the bus TNU-143.

(4) What order ?

7. On behalf of the claimants, P.Ws. 1 and 2 were examined and Exhibits P-1 to P-5 were marked. None were examined on the other side although a certified copy of the Insurance Policy at Ex. R1 was produced by consent.

8. After hearing the arguments of the learned counsel on both sides and after considering the evidence on record, the Tribunal held that the accident occurred on account of rash and negligent driving of the bus by its driver Sri Nagaraju who is not made party in this appeal. Accordingly, the Tribunal awarded the total compensation of Rs.71,600/- for the death of deceased Kempegowda. On issue No. 3 it held that Siddappa was the owner of the vehicle in question, because it was not pressed by the learned counsel for the insurer and consequently the insurer was made liable to pay the amount of compensation awarded.

9. As to the loss of dependency, the Tribunal considering the evidence on record

held that the deceased was earning monthly income of Rs. 600/- and after deducting 1/3rd of it, the net loss of dependency was arrived at Rs. 400/- per month. Having taken the age of the deceased as 38 years, the operative multiplier of 12 was adopted and accordingly the total loss of dependency was worked out at Rs. 50,600/-. Adding to it conventional sums of Rs. 5,000/- towards loss of consortium, Rs. 6,000/- towards loss of estate, and Rs. 3,000/- towards funeral expenses, the Tribunal awarded global compensation of Rs. 71,600/-.

10. We have heard Sri S. P. Shankar, learned counsel appearing for the appellant- insurer.

11. The main contention urged by Sri Shankar is that one Hanumantha Setty was the registered owner of the vehicle in question. No doubt, Sri Siddappa, respondent-8 herein, sent up proposal for issue of Insurance Policy in respect of the vehicle in his name and it was issued in his name as per Annexure-R1 produced in the trial Court. But, according to him, the liability continues with the owner of the vehicle Sri Hanumantha Setty and not Siddappa as he cannot be said to be the owner of the vehicle merely because the Insurance Policy stands in his name. Referring to the insurable interest of a person dealt with under Chapter XV of Principles of Insurance Law, Fifth Edition, by M. N. Srinivasan, Sri Shankar argued that the insurable interest could only be with the real owner of the vehicle and not with any other person. In other words, his legal contention was that a valid contract of insurance can be entered into by a person only if he has insurance interest in the subject-matter of insurance and that Siddappa being not the owner of the vehicle as on the date of the commencement of the policy much less on the date of accident involving the vehicle in question, the insurance policy obtained by him was not a valid one that too when it was obtained by misrepresentation and that therefore he could not be held liable for the accident as long as the real owner was Hanumantha Setty who was not made party to the proceedings.

12. Sri Shankar also took us through the observations made in the Law of Insurance, fifth Edition, by Raoul Colinvaux. In the light of the observations made by the author, he argued that a bailee of a chattle may be entitled to an insurance policy but as long as the owner of the chattle is not made party to the proceedings, it is open to the Insurance Company who had issued the policy to disown its liability on the ground that there is no insurable interest or liability after the risk under the policy occasioned. He therefore contended that the tribunal failed to apply its mind to this question which is relevant in a case of this kind to record a proper Finding on this question. As there was no proper assistance on behalf of the insurer in the trial Court, no proper finding had been recorded on this relevant question. However, he contended that since Hanumantha Setty, the real owner of the vehicle in question, has not been made party to the proceedings, Siddappa, respondent-8, cannot be saddled with the liability to pay compensation although the policy has been issued in his name and

therefore the insurance company cannot be made liable to pay the compensation on behalf of the insured.

13. Another contention of Sri Shankar is that having regard to the provisions of Section 95(2)(b)(i) of the Act, the liability of the insurer being limited to Rs. 50,000/- as the policy is an Act policy, that liability cannot be enlarged by directing the appellant-insurer to pay the entire amount of compensation. He therefore contended that any amount over and above the liability of Rs. 50,000/- shall be made good by the owner of the vehicle.

14. First I will deal with the second contention of Sri Shankar. I find some force in this contention, regard being had to the policy at Ex. R1. It has been issued u/s 95(2)(b)(i) of the Act. The premium paid thereunder is as follows:--

Rs. Basic ... 240-00	Rs. 12/- per passenger... 588-00	Driver & Cleaner ... 16-00
Total		Rs. 844-00

According to the policy, the liability of the insurance company for the death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle is such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939 in particular Section 95 of the Act. Section 95(2)(b)(i) clearly provides for the liability of the insurer in respect of any one accident resulting in death or bodily injury to any person other than passengers, carried for hire or reward, to Rs. 50,000/- in all. In the instant case, the deceased was undisputedly a third party and the policy was issued u/s 95(2)(b)(i) of the Act. Hence, it being an Act policy, the liability of the insurer is confined to what is mentioned there. In the absence of extra premium paid, it is not possible to extend or enlarge the liability over and above Rs. 50,000/-. My view is fortified by the decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, In that decision, the Supreme Court referring to the scope of Section 95(2)(b) of the Act and the policy issued including the amount of contribution made towards premium has held as follows at page 721:--

"Even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-sec. (2) of S. 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf, Likewise, if risk of any other nature for instance, with

regard to the driver or passengers etc., in excess of statutory liability, if any, is sought to be recovered, it has to be clearly specified in the policy and separate premium paid therefore This is the requirement of the tariff regulations framed for the purpose."

15. Therefore, in view of the said decision and regard being had to the policy at Ex. R1 issued in the instant case, I have no alternative but to hold that the contention of Sri Shanker, learned counsel for the appellant, that under the policy the liability of the insurer is limited to Rs. 50,000/- and any amount over and above that amount has to be made good by the owner of the vehicle is correct.

16. On the first contention of Sri Shankar, the following questions which are very important arise for consideration.

(1) Whether the insurer-appellant proves by adducing evidence that the insurance policy was obtained by Siddappa, respondent-8, by misrepresentation.

(2) Is it open to the insurer to contend that though the insurance policy was issued in the name of Siddappa, it is the real owner Hanumantha Setty who is liable to make good the compensation awarded.

17. Although Mr. Shankar advanced the argument that Siddappa, respondent-8 herein, had no insurable interest in the vehicle in question as he was not the owner thereof and Hanumantha Setty being its owner was the insured before the issuance of the Policy, Ex.R-1, which has been obtained by misrepresentation and, therefore, he was liable to answer the claim for the death of deceased Kempegowda, no such specific plea was taken in the trial Court. On the other hand, the specific stand taken in the defence, as I have already noticed, was that Siddappa was not the owner of the bus TNU 443. Accordingly, issue No. 3 was raised to prove that Siddappa was not the owner of the vehicle. Unfortunately, this stand was given up in the trial Court and hence the Tribunal held that Siddappa was the owner of the vehicle as the issue was not pressed. Secondly, no evidence was let in before the Tribunal to show that Hanumantha Setty continued to be the owner of the vehicle even as on the date of issuance of the policy, Ex. R. 1. It is nobody's case that at the time of issuance of the policy, Ex. R-1, Siddappa misrepresented to the appellant and obtained it. Unfortunately, neither the owner nor the driver of the vehicle choose to contest the claim despite service of notice. Therefore, the Tribunal had no opportunity to examine this aspect in the absence of relevant evidence. It was the duty of the insurer to have satisfied itself whether Siddappa was or was not the owner of the vehicle in respect of which policy was sought for. No objection whatever was taken when the policy was claimed by Siddappa in respect of the vehicle in question. All that it was pointed out during trial was that Siddappa, respondent-8 herein, was not the owner of the vehicle, though the policy was issued in his favour in respect of the vehicle after collecting premium. Thus, a new case is sought to be put forward in this appeal for the first time.

18. Let me examine the legal position in respect of the policy issued so as to

enable a vehicle to run on the road. The learned author Raoul Colinvaux in his book referred to above in Chapter "Construction of the policy as a whole" in page 36 at 2-07 has observed as follows:--

"The policy must if possible be construed to make it an effective legal document; thus where it is ambiguous it will be presumed to be made with the person who had an interest in the subject-matter"..... (Please see *southern-land Marine v. Kearney and Noonam* (1851) 16 Q.B 925.

The learned author proceeds to observe further:

"....and a policy must not, where there are two constructions open, be given a meaning that will render it a wagering contract and therefore unenforceable. Similarly, it is prima facie to be assumed that a motor-vehicle policy affords the cover required by statute." (Please see Lord Wright in *Digby v. General Accident* (1943) A.C 221

19. Thus we will have to construe the policy as a whole to find out the intention of the parties, one of whom being the holder of the policy interested in the subject matter of insurance, and to reach the meaning of the parties through the words they have used intending to give effect to whole of it and not defeat the very object of the policy, assuming that they mean what they say.

20. The observations of the learned Author at page 37 made in this context are:

"It is only exceptionally that these rifles come into operation: the primary rule is that effect should be given if possible to every part of the contract, whether the parts are in writing or printed, or whether they occur earlier or later in the policy or in date. Thus if a part of the contract is contained in the proposal, and a part in the policy, effect must be given if possible to both those documents. The proposal conditions and the express conditions of the policy must be read together and so far as may be, reconciled, so that every part of the contract may receive effect. (Please see *Bankes LJ., in Kaskas v. Standard Marine* (1927) 137 ELT 165

21. As regards the surrounding circumstances to be taken for construction of the policy, the learned author observed at page 38 at 2-11 as follows:--

"Surrounding circumstances.-- In construing a policy, regard may be had to the surrounding circumstances such as the nature of the transaction and the known course of business and the forms in which such matters are carried out, but regard may not be given to and in this respect evidence is not admissible of, particular facts that occurred at the inception of the transaction or during the negotiations....." (Please see Lord Summer in *Yorkshire Insurance v. Campbell* (1917) AC 218

22. Therefore, taking into consideration the circumstances under which the policy, Ex. R-1, came to be issued, the Court must presume that the appellant-insurer having applied its mind to the provisions of law relating to insurance and

having verified the proposal and satisfied itself that Siddappa, respondent-8 herein, was the competent person to obtain the policy, issued the policy accordingly in terms of Ex. R-1 by collecting premium and imposing conditions as found in the policy. Therefore, we will have to presume that the appellant was satisfied that Siddappa was competent to hold the policy sought for in respect of the vehicle in question and therefore it issued it in his favour. Hence, it is not open to him now at this stage to blow hot and cold and say turning around that Siddappa was not the owner of the vehicle and that the policy was obtained by misrepresentation. It is too much on the part of the insurer to take a stand of this kind when he was called upon to make good the compensation awarded against the insured. The law requires that the proposal offered by the insured must be construed properly and if the proposal culminated in issuing a policy, the presumption is that what was proposed by the insured was accepted. Therefore, it is not open to the insurer now to say that Siddappa on whose proposal, the policy, Ex. R-1 was issued was not the owner of the vehicle and that the policy was obtained by misrepresentation, on the ground that Hanumantha Setty was the owner of the vehicle.

23. Let me presume for the purpose of argument that Hanumantha Setty was the owner of the vehicle and that he had obtained a policy of insurance in his name in respect of the vehicle in question. May be thereafter there was a transaction between Hanumantha Setty and Siddappa relating to transaction of interest in the vehicle in question in favour of Siddappa thereby the latter approaching the insurer to obtain a policy in his name to run the vehicle on the road, after complying with the requirements of law and the Insurance Company having been satisfied with the fulfilment of the conditions issued the policy in the name of Siddappa. Therefore, it cannot take, at this stage, a stand which is entirely inconsistent with the insurance policy issued to Siddappa. If there had been any doubt in the mind of the appellant at the time of issuance of the policy, it could have verified whether Siddappa had insurable interest in the vehicle proposed to be insured or not. It seems to me no efforts whatever were made by the appellant in this behalf. Therefore, it is clear that once the policy was issued legitimately after collecting premium from Siddappa, the insured under the policy, the appellant is prevented from taking a stand which is contrary to the proposal and acceptance between the parties. In this regard, the provisions of the Contract Act are¹ against the insurer. Therefore, considering all these circumstances, I must hold that acceptance of the contention of Sri Shankar would defeat the very object of not only the policy which was taken to safeguard the interests of third parties but also the very enactment. He has not been able to persuade me to take a different view from the one expressed by the Tribunal as to the liability of the appellant to make good the compensation awarded. He has to take the consequence for what the learned counsel in the Tribunal submitted that he would not press issue No. 3. This is another death blow to the insurer. Therefore, I reject the contention of the appellant, and hold that the appellant failed to prove that Siddappa obtained the policy by misrepresentation

and that Hanumantha Setty was the owner of the vehicle; therefore he has to make good the compensation awarded.

24. At the time of argument, learned counsel for respondents 1 to 7, claimants before the Tribunal, filed a Memo along with an endorsement dated 10-9-1986 made by the Regional Transport Officer, Mandya. By a careful consideration of it, it is seen that Hanumantha Setty s/o H. Venkasetty was the owner of the vehicle TNU 443 as on 27-8-1981. It is further seen from it that subsequently the said Hanumantha Setty got his residential address changed. In the last paragraph, it is stated that the insurance policy issued by the appellant, Mysore Branch, of the vehicle was valid up to 17-8-1985. There is no doubt about the validity of the policy of Insurance of the vehicle on the date of accident on 2-5-1985 resulting in the death of deceased Kempegowda. But, it does not throw any light on the question whether Hanumantha Setty transferred the vehicle subsequently in favour of Siddappa or not. As I have already noticed, there is no evidence let in by either party to enable the Court to record a finding on this question. Therefore, this endorsement does not serve any purpose to record a finding on this relevant question.

In the result and for the reasons stated above, we make the following.

ORDER

This appeal is partly allowed. The liability of the appellant-insurer to pay the compensation awarded is restricted to Rs. 50,000/-. It shall pay the said amount out of total compensation of Rs.71,600/- awarded in favour of the claimants along with interest at the rate awarded by the Tribunal. The remaining amount of compensation shall be made good by the owner of the vehicle Sri Siddappa, respondent 8 herein. Ordered accordingly.

In the circumstances, the parties to bear their own costs.

25. Appeal partly allowed.