

(2010) 09 KAR CK 0058

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 13235 of 2006

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Drakshayanamma

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (5), 149 (1)

Citation : AIR 2011 Kar 159 : (2011) 6 RCR(Civil) 2496

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; M.R. Shashidhar and N. Srinivas, for the Respondent

Final Decision : Allowed

Judgement

Arali Nagaraj, J.—All these 12 Miscellaneous First Appeals have arisen from the same Common Judgment and respective Awards dated 06.09.2006 passed in MVC No. 1123/1997 and other connected cases on the file of learned Presiding Officer, Fast Track Court-III and Addl. MACT, Tumkur (hereinafter referred to as "MACT" for short).

2. The respective motor vehicle compensation cases were filed before the MACT by the respective injured-claimants claiming compensation towards the bodily injuries sustained by them in the motor vehicle accident that occurred on 27.10.1996 at about 3.00 p.m. on Huliur road near Aladekatte within the limits of Chiknayakanahalli police station in Tumkur District which was caused by the driver of Matador Van bearing registration No. KA 06-5878 by driving it in a rash and negligent manner. All these appeals are by the insurer of the said vehicle. Respondent No. 1 is the claimant and Respondent No. 2 is the owner of said vehicle in each of these appeals. The same set of facts and question of law are involved in all these appeals. Therefore, these appeals are disposed of by this Common Judgment.

3. I have heard the arguments of Sri. O Mahesh, learned Counsel for the Appellant Insurance Company and Sri. M R Shashidhar, learned Counsel for the Respondent-claimants in all these appeals. Perused the impugned Judgment and respective Awards.

4. It is not in dispute that the accident, involving the said vehicle, occurred on the said date, time and place and that as a result of the said accident, the claimants in each of the said cases sustained bodily injuries. It is also not in dispute that the said accident was due to rash and negligent driving of the said vehicle by its driver and that second Respondent was the owner thereof.

5. The second Respondent, the owner of the said vehicle has not chosen to contest these appeals despite receipt of notice of appeals.

6. Having heard the learned Counsel for both the sides, the only point that arise for my determination is:

Whether the MACT is justified in directing the Appellant Insurance Company to pay to the respective injured claimants in all the said cases the respective amounts of compensation awarded by it, despite recording its findings that the policy of Insurance that was issued by the Appellant Insurance company was cancelled much earlier to the occurrence of the accident for the reason that the cheque that was issued by the owner of vehicle towards premium had bounced?

7. The following facts are not in dispute:

a) The Appellant Insurance Company issued in favour of second Respondent owner Ex.D3 certificate-cum-policy in respect of the said matador van valid for the period from 10.00 hours on 17.08.1996 till mid night of 16.08.1997. The owner of the said vehicle issued Ex.D1 cheque dated 16.08.1996 for Rs. 4,447/- being the premium towards insurance of the said vehicle.

b) The said cheque came to be returned to the Insurance Company dishonoured for want of funds in the account of owner of the said vehicle. Ex.D4 is the intimation given by the bank to the insurance company in respect of dishonour of the said cheque. Then the Insurance company cancelled the policy of insurance issued in respect of the said vehicle and Ex.D6 is the copy of cancellation notice and Ex.D7 is the postal acknowledgement to the effect that said notice was received by the owner on 27.08.1996.

8. Thus, it is clear from the above undisputed facts that though the Insurance certificate-cum-policy (Ex.D3) was issued by the Appellant Insurance company for the period from 17.08.1996 to 16.08.1997, it came to be cancelled as per Ex.D6 and cancellation came to be intimated to the insured and the intimation of cancellation was received by the insured on 27.08.1996 i.e., much earlier to the occurrence of the accident which occurred on 27.10.1996. This being so, it is further clear that as on the date of occurrence of the said accident, there was no valid insurance in force in respect of the said vehicle.

9. On careful reading of the impugned common judgment, it could be seen that MACT has recorded its finding that since the Insurance policy which was issued by the Insurance company was cancelled much earlier to the occurrence of the accident and the intimation of cancellation of insurance was also given to the owner of the said vehicle, the insurance company is not liable to indemnify the owner in respect of the injuries sustained by the respective claimants in all the said cases who are all admittedly third parties.

10. Sri. O Mahesh, learned Counsel for the Appellant Insurance Company strongly contends that despite recording the said finding, the MACT ought not to have directed the Insurance company to pay the respective amounts of compensation to the respective claimants in the said case and then recover the same from the owner of the said vehicle and therefore, the impugned judgment and respective awards insofar as they relate to said direction deserve to be set aside.

11. Placing strong reliance on the subsequent decision of Hon'ble Supreme Court in the case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., , learned Counsel for the Appellant Insurance company strongly contends that when the Insurance policy was cancelled by the Insurance company and cancellation on the ground that cheque issued by the owner of the vehicle towards premium was dishonoured and the factum of cancellation of the policy was intimated to the owner, the insurance company cannot be held liable to indemnify the owner in respect of injuries sustained by the claimant in the said cases, though they are all 3rd parties.

12. Per contra, placing his strong reliance on the Full bench decision of Kerala High Court in the case of Oriental Insurance Co. Ltd., v. Sivankutty and Ors. reported in 2006 ACJ 106, learned Counsel for the Respondent-claimants strongly contends that insofar as 3rd parties are concerned, the Insurance Company is liable to pay compensation despite the insurance policy being cancelled by it earlier to the occurrence of accident on the ground that the cheque that was issued by the owner of the vehicle was dishonored.

13. I have carefully gone through both the said decisions relied upon by the respective learned Counsel for the parties. Full bench of Kerala High Court has observed at para 20 of its judgment as under:

20. Neither from the three member decision of the Supreme Court in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , nor from the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 do we get any support to hold the view that the liability to pay compensation for injuries sustained to third parties ceases to exist after the cancellation of the policy. The situation is not akin to that of an owner of a vehicle not having taken any insurance at all for the vehicle as on the date of the accident, as is observed by the Division Bench of this Court in New India Assurance Co. Ltd. Vs. Raghu, . We, therefore, hold that the decision of the Division Bench of this Court in New India

Assurance Co. Ltd., v. Raghu (supra) does not lay down the correct law. The position is that the liability of Insurance company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the insurance company. The remedy of the insurance company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed.

The reference is answered as above. The Registry shall approximately place the file before the referring Bench alongwith the answer on the reference for further appropriate action in the matter.

14. However, the Hon"ble Supreme Court has observed at para Nos. 11, 16, 20, 26 and 27 of its Judgment in Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.,) as under:

11. Indisputably, the accident had occurred on 6.2.1998 that is much after communication of cancellation of the policy".

16. The question came up for consideration before this Court in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , wherein it was opined that a policy of insurance which is issued in public interest would prevail over the interest of the insurance company. In that case a bus met with an accident. The policy of insurance was issued on 30.11.1989. A letter stating that the cheque had been dishonoured was sent by the Insurance Company to the insurer on 23.1.1990. The premium was paid in cash on 2.5.1990. The accident took place 19.4.1990. Despite noticing Section 64-VB of the 1938 Act, but having regard to the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the Act and in particular having regard to the fact that policy of insurance to cover the bus without receiving the premium had already been issued, this Court held that the Insurance Company was liable to indemnify the insured.

20. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd. Vs. Rula and Others, . It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it.

It was opined: "(11) If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

The dicta laid down therein clarifies that if on the date of accident the policy

subsists, then only the third party would be entitled to avail the benefit thereof.

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

[Emphasis supplied by me]

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, , this Court held:

We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

We, therefore, agree with the opinion of the High Court.

15. Learned Counsel for the Respondent-claimants referring to the observation of Hon''ble Supreme Court in the case of *Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.*,) submits that though the Insurance company is not liable to pay any amount of compensation to any of the claimants, a direction issued by the MACT to pay the compensation to the respective claimants and then recover the same from the owner need not be disturbed.

16. It is pertinent to note that it is observed by the Hon''ble Supreme Court at para 28 of the judgment as: "in exercise of our extraordinary jurisdiction under Article 142 of Constitution of India, direct the Respondent No. 1 to pay the amount of claim to the Appellants herein and recover the same from the owner of the vehicle namely Respondent No. 2". Such direction cannot be issued either by the claims Tribunal or even by this Court.

17. Following the above observations of Hon''ble Supreme Court, I am of the considered opinion that the Appellant Insurance Company is not liable to pay any amount of compensation to any of the injured claimants in the said cases. Therefore, the direction issued by the Tribunal in the impugned common judgment and the respective awards that Insurance Company shall pay compensation to the respective claimants and then recover the same from the owner of the said vehicle deserves to be set aside.

18. For the reasons aforesaid, all these appeals are hereby allowed.

The impugned Common Judgment and the respective Awards in the said MVC cases insofar as they relate to the direction that the Appellant Insurance company shall pay compensation to each of the claimants and then recover the same from the owner of the said vehicle are hereby set aside. It is made clear that respective claimants are at liberty to recover the compensation amount from the owner of the said vehicle. No order as to costs.

Whatever amount is deposited by the Appellant Insurance Company in these appeals shall be returned to it.

The original of this Judgment shall be kept in MFA No. 13235/2006 and a copy thereof in each of the other appeals.