

(1980) 10 KAR CK 0026

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 339 and 299 of 1976

United India Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Chennamma and Others
 Mushir Ahmed Vs
Chennamma and Others

RESPONDENT

Date of Decision : 13-10-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 103 A

Citation : (1983) 53 CompCas 789

Hon'ble Judges : G.N. Sabhahit, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : A.R. Narayana and J.S. Gunjal, for the Appellant; B.K. Ramachandra Rao and M. Sowri Raju, for the Respondent

Judgement

Sabahit, J.—These two appeals arise out of the judgment and award dated December 6, 1975, passed by the Member, Motor Accidents Claims Tribunal, Chickmagalur, in Miscellaneous Case (MVC) No. 8 of 1974, on his file, awarding a compensation of Rs. 30,000 in favour of the claimant from the respondents.

2. Miscellaneous First Appeal No. 339 of 1976 is filed by respondent 5, the United India Fire and General Insurance Company, and Miscellaneous First Appeal No. 299 of 1976 is filed by respondent 4, Mushir Ahamed.

3. It is the case of the insurance company that the insurance company is not liable to pay the compensation, as the insured, owner of the vehicle, transferred the vehicle before the accident in favour of Syed Ahmed (respondent 3) under Ex.D. 3 on November 16, 1973, the accident having happened on December 7, 1973. Thus, the insurance company contends in the appeal that the Tribunal was in error in saddling the liability on the insurance company, as, by virtue of the transfer of the vehicle by the original owner, Syed ahmed (respondent 3), the policy lapsed.

4. It is the case of respondent 4 (the appellant in Miscellaneous first Appeal No.

229 of 1976) that he is a transferee for value of the truck subsequent to the accident and, therefore, he is not liable to pay any compensation.

5. The points, therefore, that arise for our consideration in these two appeals are :

(1) Whether the insurance company (original respondent 5 and the appellant in Miscellaneous First Appeal NO. 339 of 1976) is liable to pay any compensation on the facts of the present case ?

(2) Whether the appellant in Miscellaneous First Appeal No. 299 1976 (Original respondent 4) is liable to pay any compensation ?

6. It is not in dispute and the Tribunal has found, on the evidence record, that the accident happened on December 7, 1973, due to the reading and negligent driving of the lorry in question by its driver. The Tribunal has further come to the conclusion that the lorry was transferred by a registered owner and insured (respondent I in the petition) in favour respondent 3 on November 16, 1973, for Rs. 8,000.

7. It is no doubt true that the learned advocate for the claimant vehemently contended that Ex. D-3 is a document brought about for the purpose and that it should not have been relied upon by the Tribunal. The submission so made was resisted by the learned advocates for the appellants.

8. There was absolutely no need for respondent 1 to create a fake document in favour of respondent 3 as he was not to gain anything out of it. In fact, if the lorry stood in the name of respondent 1 and the accident was committed by the negligence of his driver, he could have claimed that the insurance company (respondent 5 in the petition) should have indemnified him. He was not to pay the compensation from his pocket. That being so, there was no need for him to attempt to create any fake document. The attestor of the document, in addition to respondents 1 and 3 (R.Ws. 2 and 3), has been examined before the Tribunal. They have spoken to the transfer. Not merely that, as rightly pointed out by the Tribunal, respondent 3 has got the lorry released from the criminal court, as can be seen from Ex. P-9. That being so, we have no hesitation whatsoever to confirm the finding of the Tribunal that the lorry was transferred by its registered owner, Imthiaz Ali (respondent 1) in favour of respondent 3 on November 16, 1973, as per Ex. D-3.

9. The learned advocate appearing for the insurance company further pointed out that it was respondent 3 who got the driver bailed out in the criminal case, which further supports that there was no consent taken of the insurance company as no notice in the prescribed form was given to the company under s. 103A of the Motor Vehicles Act. Such a contention is open to the insurer (Vide *Queensland Insurance Co. Ltd. Vs. Rajalakshmi Ammal and Others*, followed in *Insurance Company Limited Vs. Vimal Rai and Others*, and *Madras Motor and General Insurance Co. Ltd. Vs. Jagadeeswari and Others*, . The Tribunal has got

confused in thinking that the policy was to be cancelled by the company. The question of cancelling the policy comes in when there is a suppression of material facts or fraud practiced on the company. There is no such allegation here and what the insurance company has pleaded is that the policy has lapsed. Hence, the Tribunal was not justified in relying on the decisions which speak about cancellation of policy. If the company was entitled to cancel the policy and if it did not cancel the policy, it is no doubt true that the company would be liable for third party risks (Vide New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, But the facts of the present case are entirely different. It is a case of the policy lapsing, the insured having transferred the vehicle. It is well settled that the policy of insurance forms a contract of indemnity. When the insured is no longer the owner of the vehicle, the contract fails and lapses Smt. Gulab Bai Damodar Tapse Vs. Peter K. Sunder and Others . It is that way that the liability of the insurance company is not available, not because the company had to cancel the policy.

10. For the foregoing reasons, we are satisfied that the Tribunal erred in thinking that the insurance company could be saddled with the liability because it has not cancelled the policy. We hold that the insurance company is not liable to pay the compensation because the policy has lapsed by virtue of the transfer of the vehicle by the insured (owner under Ex. D-3 to original respondent 3).

11. Adverting to the case of respondent 4, the evidence on record clearly establishes that the lorry was transferred in his favour in the year 1974. That is, long after the accident. That being so, he is in no way liable to pay compensation on account of the accident prior to his purchase. Hence, his appeal is entitled to succeed.

12. In the result, therefore, both the appeals are allowed. The liability of the insurance company (original respondent 5) is hereby set aside. Similarly, the liability saddled on the original respondent 4 (the appellant in Miscellaneous First Appeal No. 299 of 1976) is hereby set aside.

13. No costs of these appeals.