
(1989) 06 KAR CK 0055
In the Karnataka High Court
Case No : M.F.A. No. 1588 of 1982

United India Insurance Co.

APPELLANT

Vs

Balasubramanyam

RESPONDENT

Date of Decision : 30-06-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1939 — Section 110 D, 96 (2)

Citation : (1990) 2 ACC 569 : (1990) ACJ 736 : (1990) ILR (Kar) 483

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : C.K. Kambeyanda, for the Appellant; N.P. Moganna, for R-1 and R. Narayana, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—This appeal is presented by the United India Insurance Company against the award made by the District Judge and Motor Accidents Claims Tribunal, Mandya in the claim petition presented u/s 110A of the Motor Vehicles Act ("the Act" for short). Cross-objections is filed by the Taluk Agricultural Producers Marketing Co-operative Society represented by its Secretary who was respondent-1 in the claim petition.

2. The facts of the case in brief are as follow:-

On 14th May, 1980 a lorry bearing registration No. MYN 3824 belonging to the Society was proceeding towards Bangalore on Mysore-Bangalore road. A car bearing registration No. MSW 19 driven by the petitioner-claimant was proceeding towards Mysore. The accident occurred when the vehicles crossed at K. Settihalli at about 4-30 P.M. The car collided with the hind portion of the lorry as a result of which there was a damage to the car and injury to the driver. The injured owner-driver of the car presented a claim petition claiming compensation of Rs. 2,82,000/-.

3. The two main issues for consideration before the Tribunal were:

(1) Whether the accident occurred solely on account of the negligence of the driver of the lorry belonging to the Society? and

(2) What is the quantum of compensation to be awarded to the claimant?

4. On the first point, on the basis of the evidence on record, the Tribunal recorded a finding that there was contributory negligence on the part of the claimant also and the proportion of negligence between the driver of the lorry and the claimant who was driving the car was 75:25. On the question of compensation, having regard to the injuries suffered by the claimant, the Tribunal quantified the compensation at Rs. 1,18,000/-. After making an allowance to the extent of 25%, out of If, in view of the contributory negligence on the part of the claimant, a compensation of Rs. 88,500/- was awarded to the claimant. As regards the liability of the owner of the lorry and the Insurance Company, the Tribunal held both were jointly and severally liable to pay the entire amount of compensation awarded.

5. The Insurance Company is in appeal before us contending that the 3rd party risk covered by the policy issued by the appellant-company was limited to Rs. 50,000/- In view of Section 95(2)(b)(1) of the Act. The learned Counsel for the respondents contend that no such plea was taken by the Insurance Company before the Tribunal. Learned Counsel for the appellant does not dispute that there was omission on the part of the appellant-company to take such a specific plea based on Section 95 of the Act and he also does not dispute that the Office copy of the Insurance Policy was not produced. However, he has made an application in this appeal seeking permission of the Court to produce office copy of the policy and has also sought our permission to raise the plea as it is based upon the statutory provision. As the question is purely a question of law based on Section 95 of the Act and also on the basis of the office copy of the policy which has been produced before us, the genuineness of which is beyond reproach, we have permitted the appellant to produce it as an additional evidence and also to urge an additional plea to the effect that the liability of the appellant Insurance Company was limited to Rs. 50,000/-. Section 95(2)(b)(1) expressly provides that in respect of persons other than the passengers in respect of goods vehicle, the liability is limited to Rs. 50,000/-. This liability can be increased only by paying additional premium and getting extra coverage. The learned Counsel pointed out that no extra premium was paid for covering extra risk in respect of 3rd parties. As no additional premium was paid and no extra coverage for covering the risk in respect of 3rd parties had been taken, the restriction provided u/s 95(2)(b)(1) of the Act has to prevail and therefore the liability of the Insurance Company has to be restricted to Rs. 50,000/- as also proportionate interest and costs.

6. Sri R. Narayan appearing for the cross-objector, however, contended that the finding of the Tribunal regarding the proportion of the contributory negligence by

the cross-objector and the claimant at 75:25 was erroneous and on the material on record, the Tribunal should have held that the proportion of negligence was 50:50. Learned Counsel for the claimant, however, raised a preliminary objection to the cross-objections of the cross-objector. Learned Counsel contended that as the scope of the appeal by the Insurance Company was limited only to the extent of the liability of the Insurance Company under the policy or its non-liability under a policy, the scope of the cross-objection must also be correspondingly limited and in the appeal presented by the Insurance Company, the cross-objector cannot question the finding of the Tribunal on other issue including the quantum of compensation. In support of this submission, the learned Counsel relied on a Division Bench of this Court in *The National Insurance Co. Ltd. Vs. H.N. Rama Prasad and Others*, In the said case, this Court held that when the appeal was by the insurer as to the extent of its liability, in a cross-objection in such an appeal by the respondent owner of the vehicle, quantum of compensation awarded cannot be questioned.

7. Learned Counsel for the cross-objector, however, submitted that once an appeal was filed and a notice was served on the respondent, the provisions of Order 41 Rule 22 of the CPC are attracted and in the cross-objections filed by the respondent, he was entitled to raise all questions which he was entitled to raise in the original proceedings as well as in appeal if he has chosen to prefer an appeal independently. In our opinion, while interpreting the scope of the cross-objections in an appeal presented by an insurer u/s 110D of the Act, the scope of the appeal under that provision by an insurer has to be borne in mind. Under the provisions of the Motor Vehicles Act, both in the original proceedings as well as in the appeal, an insurer is entitled to raise only such of the grounds as are specifically provided in Section 96(2) of the Act. It is only in cases of collusion between the claimant and the owner of the vehicle, the Insurance Company could contest the claim petition on the quantum of compensation with the permission of the Court. It is not disputed that in the appeal presented by the Insurance Company, only ground which the appellant is entitled to urge is about its non-liability or the extent of its liability. The provisions of Order 41 Rule 22 have to be read harmoniously with the provisions of Section 110D of the Motor Vehicles Act. The combined effect of Section 110D and Order 41 Rule 22 C.P.C. is that in an appeal presented by an insurer in which the only ground of challenge is about the extent of liability of the Insurance Company, the cross-objector in such an appeal cannot be permitted to contest the quantum of compensation or the findings recorded on any other issue. For these reasons, we are in respectful agreement with the view taken by the Division Bench of this Court in *National Insurance Company's* case referred to above.

8. In the result, we make the following:

ORDER

(i) The appeal is allowed and (ii) the liability of the Insurance Company under award is limited to Rs. 50,000/- and proportionate interest and cost. The award

in other respects shall remain undisturbed.

ORDER ON CROSS-OBJECTION

Rama Jois, Ag.C.J. Dated 26-9-1989

The matter is posted pointing out that no orders are passed on the cross-objection.

In paragraph-8 of the Judgment, we have held that there is no merit in the cross-objection, though there has been an omission to dismiss the cross-objection in the operative portion of the order.

For the reason aforesaid, we make the following order:

The cross-objection is dismissed.