(2005) 08 KAR CK 0009

In the Karnataka High Court

Case No : Miscellaneous First Appeal No''s. 5966 of 2001 and 226 of 2002

United India Insurance Co. Ltd. — APPELLANT

Vs

Devaiah, Vakils Ahmed and Yelamade Gowda
 Devaiah Vs Yelamade Gowda and United India Insurance Co. Ltd. — RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:
Third Party Insurance Rules, 1946 — Rule 10

Citation : (2006) 3 ACC 878 : (2007) ACJ 1659 : (2006) ILR (Kar) 2017 : (2006) 2 KCCR 102 SN : (2006) 3 RCR(Civil) 173

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : A.M. Venkatesh, in MFA No. 226/2002 and P. Nataraju Associates in MFA No. 5966/2001, for the Appellant; P. Nataraju Associates for R1 in MFA No. 226/2002 and A.M. Venkatesh, for R.2 in MFA No. 5966/2001, for the Respondent

Judgement

K. Sreedhar Rao, J.—Both the appeals arise out of the same accident, hence,. they are taken up for consideration together, heard and disposed of by this common, order.

2. The petitioner in M.V.C. No. 255/97 sustained fracture of shaft of left femur in a motor vehicle accident. The petitioner was an inpatient in the hospital for about 15 days. There is shortening of lag by 6 cms. The total body disability is assessed at 30%. Petitioner is a mason. His income to be assessed at Rs. 1,500/- per month, in the absence of income proof. The petitioner is in appeal seeking enhancement.

3. The insurer has filed M.F.A. No. 5966/2001 seeking avoidance of the liability on the ground that there was no policy.

4. On re-examination of facts and evidence, the petitioner is entitled for Rs. 30,000/- towards pain and agony; Rs. 15,000/- towards medical and incidental expanses relating to treatment; Rs. 30,000/- towards loss of amenities and discomfort on account of disability; Rs. 91,800/- (450 X 12 X 17) towards future

loss of income on account of disability and Rs. 8,000/- towards loss of income during the laid up period. Thus, in all, petitioner is entitled for a compensation of Rs. 1,74,800/- with interest at 6% from the date of the petition till payment as against Rs. 93,864/- awarded by the Tribunal.

5. It is the contention of the insurer-appellant in M.F.A. 226/2002 that the Policy vas issued from 29.02.1996 to 28.02.1997 as against payment of cheque. The cheque was dishonoured on 02.03.1996. The accident occurred on 02.07.1996. the insurer had issued notice to the insured regarding the dishonour of cheque and cancellation of policy as par Ex.R.5 dated 06.03.1996. Therefore, the accident has occurred subsequent to cancellation of policy. To prove ''the "said fact, the insurer has produced only a register maintained by him. the postal receipt and postal acknowledgement regarding receipt of the notice by the insured are not produced. The extract of the register produced is basically an in-house document of the insurer. Therefore, no credibility could be attached to the said document. the contention of the insurer that the registered notice was issued regarding cancellation of the Insurance Policy to the insured as per Rule 10 of the Third Party Insurance Rules, 1946, is untenable, Therefore, the insurer is liable to pay the compensation in view of the ruling in the case of New India Assurance Co. Ltd. Vs. Rula and Others, .

6. The contention of the learned Counsel for the insurer that the owner had appeared and has not disputed the cancellation of the insurance Policy, is no ground to exonerate the liability of the insurer. The law requires that in order to avoid liability of the third party risk, the insurer has to categorically establish the cancellation of the Policy and proof of due intimation of cancellation of the policy, such a fact can be proved only when the notice is issued by way of registered post. The alternative methods like production of certificate of posting or production of despatch registers maintained by the office of the insurer cannot be considered as a valid proof of due intimation.

7. The insured had participated in the proceedings. the insured is aware of the defence taken by the insurer. The insured has not let in any contra evidence to dispute the contention of the insurer about the dishonour of the cheque.

8. In the result, M.F.A. No. 226/2002 filed by the insurer, is dismissed and M.F.A. No. 5966/2001 filed by the claimant is allowed. Petitioner is awarded a total compensation of Rs. 1,74,8007- with interest at 61 from the date of the petition till payment as against Rs. 93864/- awarded by the Tribunal. The insurer shall pay the compensation to the petitioner-claimant, however, with a right to recover the compensation paid by it from the insured under the same award.

Amount in deposit be transferred to the Tribunal for payment.

