(2023) 02 KAR CK 0054

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6187 Of 2016 (MV-I)

United India Insurance Co. Ltd. APPELLANT

Vs

Manoj Kumar & Others RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2023) 02 KAR CK 0054

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, M.S. Aswatha Reddy, B.K. Mohan, B.L. Sanjeev

Final Decision : Allowed

Judgement

H.P. Sandesh, J

1. This appeal is filed challenging the judgment and award dated 21.05.2016 passed in M.V.C.No.271/2012 on the file of the Principal Senior Civil Judge and MACT., Srirangapatna ('the Tribunal' for short), questioning the liability fastened on the Insurance Company.

2. The parties are referred to as per their original rankings before the Tribunal to avoid confusion and for the convenience of the Court.

3. The factual matrix of the case of the claimant that on 11.01.2012 at about 12:35 a.m., near Hampapura Railway Gate, Hampapura Village, K.R.Nagar Taluk, when the petitioner along with his friends was going in Omni Car bearing registration No.KA-05-Z-2905 from Hassan towards Mysuru, at that movement the driver of the offending Omni Car bearing registration No.KA-05-Z-2905 has driven the same at high speed in a rash and negligent manner and dashed the omni Car to the back portion of the KSRTC bus bearing registration No.KA-18-F-361 resulting into the accident and injuries to the petitioner. As a result of the accident, the petitioner has sustained fracture of both the bones of right fore arm and injuries to his right thigh, fore-head. Immediately after the accident

petitioner was taken to B.M. Hospital, Mysore, from there he was shifted to ESI Hospital, Mysore, wherein, he was subjected to surgery and fractured bones of right fore arm were fixed with plates and screws. It is his contention that he has spent an amount of Rs.1,00,000/- and as a result of accidental injuries, he has sustained permanent disability. Hence, claimed the compensation.

4. In pursuance of the claim petition, respondent Nos.1 to 3 appeared before the Court and contested the claim petition by filing objection statements. The first respondent in his objection statement has contended that he has sold the omni car to the fourth respondent for a sale consideration of Rs.1,05,000/- and obtained the delivery note and the same was communicated to the RTO and the policy was in force.

5. The second respondent – Insurance Company in its objection statement contended that the liability is subject to the terms and conditions of the policy and the Insurance Company is not liable to pay the compensation since the policy is 'an act only policy'. The third respondent in his objection statement has contended that no negligence on the part of the driver of the KSRTC., bus and it is only on account of the negligence on the part of the driver of the Omni Car. The fourth respondent did not contest the matter.

6. The claimant, in order to prove his case, examined himself as P.W.1 and also examined the Doctor as P.W.2 and got marked the documents as Exs.P1 to P72(b). On the other hand, the respondents have also examined R.Ws.1 to 3 and got marked the documents as Exs.R1 to R4.

7. The Tribunal, after considering both oral and documentary evidence placed on record, allowed the claim petition in part granting compensation of Rs.5,48,000/- together with interest at the rate of 9% per annum from the date of filing of the petition till the date of deposit of the compensation amount before the Tribunal and fastened the liability on the second and fourth respondent. In view of the contract of Insurance, fastened the liability on the second respondent. Hence, the present appeal is filed by the Insurance Company.

8. The main contention of the Insurance Company in this appeal is that there is violation of terms and conditions of the policy of the Insurance Company and provisions of the Motor Vehicles Act. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the policy issued is in respect of a private Car and the injured is not a third party. The judgment of the Apex Court in the case of United India Insurance Co. Ltd., v. Tilak Singh & Others reported in 2006 ACJ 1441 SC, was not considered by the Division Bench and the Tribunal considered the Division Bench Judgment and saddled the responsibility on the Insurance Company and the same is erroneous.

9. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the Apex Court in the case of Oriental Insurance Co. Ltd., v. Sudhakaran K.V. & Others reported in 2008 ACJ 2045 SC, and in the case of Dr. T.V. Jose v. Chacko P.M. & Others reported in 2001 ACJ 2059 SC and also in

the case of National Insurance Co. Ltd., v. Balakrishnan & Another reported in 2013 ACJ 199 SC and Oriental Insurance Co. Ltd., v. Surendra Nath Loomba & Others reported in 2013 ACJ 321 SC, has determined the liability of the Insurer in respect of the liability of the Insurance Company in a case of occupant of the Car.

10. The learned counsel would vehemently contend that the Apex Court in these judgments held that the Tribunal was required to have noticed that no additional premium was paid to cover the risk of occupants and at the time of entering into a Contract of Insurance, it was not contemplated to cover the risk of occupants. Hence, fastening the liability on the Insurance Company is erroneous and illegal. It is also contended that the interest awarded at 9% per annum is also on higher side.

11. Per contra, learned counsel appearing for respondent No.1 would vehemently contend that the vehicle was sold and Exs.R2 to R4 clearly discloses that the vehicle was delivered in favour of fourth respondent and the same was intimated to the RTO. The endorsement – Ex.R3 issued by the RTO clearly discloses that the vehicle was sold. Hence, respondent No.1 is not liable to pay any compensation and only respondent No.4 is liable to pay the compensation as respondent No.4 is the owner of the vehicle at the time of the accident.

12. The learned counsel appearing for respondent No.3-KSRTC., would vehemently contend that the Trial Court exonerated the liability of the KSRTC., on the ground that the negligence has not been proved against the driver of the KSRTC.

13. Respondent No.4 has been served and unrepresented.

14. The learned counsel appearing for respondent No.2 - claimant would contend that the injured has suffered the permanent disability and the liability to pay the compensation is on respondent No.4.

15. Having heard the respective counsel and on perusal of the material available on record and also on perusal of the grounds urged in the appeal memo, the points that would arise for consideration of this Court are:

(i) Whether the Tribunal has committed an error in fastening the liability on the Insurance Company and whether it requires interference of this Court ?

(ii) What order ?

Point No.(i):

16. Having heard the respective counsel and also on perusal of the material available on record, the policy which is marked as Ex.R1 is very clear that the policy is issued in respect of private Car and the same is a liability only policy. No doubt, as on the date of the accident, the policy was in existence. When the policy is issued, the liability only policy and unless the premium is paid in respect of occupants of the private Car, the liability of the Insurance Company cannot be

saddled to pay the compensation. The contract of Insurance is only an indemnity and to indemnify the Insured, there must be a contract between the Insurer and the Insured.

17. The Apex Court in the case of United India Insurance Co. Ltd., Shimla v. Tilak Singh and others reported in (2006) 2 SCC (Cri) 344, while considering Section 147 of the Motor Vehicles Act, 1988 with regard to the third party risk held that the liability of the Insurer to pay compensation under Section 147 – risk of death or injury to gratuitous passenger carried in a private vehicle, if covered held an Insurance policy under Section 147 does not cover such a risk.

18. The learned counsel also brought to the notice of this Court that the judgment of the Apex Court which has not been considered by the Division Bench which has been relied upon by the Trial Court. It is also settled law that if the policy is 'act only policy' and unless premium is paid to cover the risk of the occupants of the private car, the Insurance Company cannot be saddled with liability and the Apex Court also in the judgments of Sudhakaran and Balakrishnan's case (supra), has categorically held that the same does not covers the risks of the occupant of the private car if the policy is an act only policy. Hence, there is a force in the contention of the learned counsel appearing for the appellant that the Tribunal has committed an error in fastening the liability on the Insurance Company. The records also reveals that the vehicle was sold in favour of fourth respondent by the first respondent and the accident was taken place in the month of January 2012 and the vehicle was sold in the month of December 2011 and Ex.R2 is clear that the delivery note was issued and the same is acknowledged by the fourth respondent for having received the vehicle. Apart from that, he had also applied for transfer of vehicle in his name and the endorsement was issued on 23.12.2011 before the accident and the same is evident from the document-Ex.R3 and consequent upon the vehicle was transferred in favour of fourth respondent in terms of Ex.R4. Hence, it is clear that the owner of the vehicle is fourth respondent and when the policy does not covers the risk of the occupant of the private vehicle; the insured is liable to pay the compensation.

Point No.(ii)

19. In view of the discussions made above, I pass the following:

ORDER

(i) The appeal is allowed.

(ii) The impugned judgment and award of the Tribunal dated 21.05.2016 passed in M.V.C.No.271/2012 is modified exonerating the liability on the Insurance Company and saddled the liability on the fourth respondent.

(iii) The fourth respondent/owner is directed to pay the compensation in terms of the judgment and award of the Tribunal within four weeks from today.

(iv) The amount in deposit shall be refunded in favour of the Insurance Company on proper identification.

(v) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.