(2011) 08 KAR CK 0164

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 13 of 2008

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Mumtaz Begum and Another RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Citation : (2013) ACJ 1563 : (2013) 1 AKR 355

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Shivanand Patil, for the Appellant; Krupa Sagar Patil, Ashok Patil and GSV Associates, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—This appeal by the United India Insurance Company Ltd. is directed against the judgment and award dated 14.09.2007 passed by the XII Additional Motor Accidents Claims Tribunal, Shorapur, sitting at Shahapur in M.V.C. No. 2/2006. By the impugned judgment, the Tribunal has awarded a compensation of Rs. 3,10,700/- with interest thereon at 6% p.a. to respondent No. 1 for the death of her son by name Tariq Nadeem due to the injuries suffered by him in a motor vehicle accident that occurred on 05.06.2002 while he was travelling as a passenger in his private jeep bearing No. KA 23/M 2981. He died on 22.07.2002. The appellant being the Insurer of the aforesaid jeep is made liable to pay the award amount. The deceased himself was the owner/insured of the said jeep. I have heard the counsel appearing for the parties and perused the impugned judgment.

2. On the facts of the case, it is unnecessary to consider all the contentions urged by the counsel for the appellant. One of the contentions urged is that the claim petition filed by respondent No. 1 u/s 166 of the Motor Vehicles Act, 1988 (''the Act'' for short), for the death of her son namely Tariq Nadeem was not maintainable in law as the deceased himself was the owner/Insured of the jeep. He submitted that the deceased, being himself the owner and insured of the

jeep, a claim for compensation relating to his death is not maintainable under the Act as against his own Insurer as an Insured is not a ''third party'' vis-a-vis his own Insurer.

3. To examine the contention as to whether a claim for compensation relating to the death of the insured is maintainable as against his own insurer, it is relevant to refer to sub-section (1) of Section 165 of the Act, which reads as follows:

165. Claims Tribunals.--(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

(Underlining supplied)

As per the above sub-section. Accidents Claims Tribunals are constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, third parties arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

4. The insured, who is a party to the contract of insurance, is not a ''third party'' in relation to his own Insurer. It is a settled position in law, that except the insurer and the insured, all others are third parties. It is also a settled position in law that a claim for compensation under the Act is maintainable only if it relates to the death of, or bodily injury to third parties or damages to any property of a third party. In the present case, as the claim petition related to the death of the insured himself and as it was filed against his own insurer and driver, the Tribunal had no jurisdiction to entertain such a claim as the deceased was not a ''third party'' within the meaning of subsection (1) of Section 165 of the Act. The Tribunal should have dismissed the claim petition as not maintainable. Accordingly, I make the following order:

5. The impugned judgment and award is set aside; the claim petition in M.V.C. No. 2/2006 filed by respondent No. 1 is dismissed as not maintainable. However, the dismissal of the claim petition will not come in the way of respondent No. 1 to pursue any other legal remedy, in accordance with law. The appellant is permitted to withdraw the amount lying in deposit with this Court.