

(2010) 03 KAR CK 0087
In the Karnataka High Court
Case No : MFA No. 5699 of 2006

United India Insurance Company Ltd.

APPELLANT

Vs

Nagarathnamma and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173 (1)

Citation : (2011) 2 TAC 462

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : A.M. Venkatesh, for the Appellant; G. Balakrishna Shastry, for R1, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—In this appeal by the Insurance Company u/s 173(1) of the M.V. Act wherein, the Insurance Company has raised the question of correctness of the Tribunal fastening the liability on the appellant Insurance Company and also on the quantum of compensation as awarded by the Tribunal.

2. There is a delay of 29 days in preferring the appeal. An application is filed u/s 5 of the Limitation Act seeking for condonation of delay accompanied by an affidavit sworn to by an Officer of the Insurance Company.

3. Notice had been issued to the respondents, first and the second respondents being the claimants before the Tribunal, the third respondent is the owner of the vehicle causing the accident and the fourth respondent being the mother of the deceased who had been arrayed as respondents in this order in the claim petition.

4. In the wake of efforts to effect service on the third respondent - the owner of the vehicle being not fruitful, this Court in terms of the order dated 21.1.2010 had permitted the appellant for effecting service on the unserved third respondent through paper publication, taken out in Vijaya Karnataka, Kannada daily news paper, Bangalore Edition.

5. The appellant - Insurance Company after having taken out paper publication

and having filed a memo in the Registry to this effect along with copy of the publication, the matter has come up for orders for acceptability of the sufficiency of service of notice on the third respondent through paper publication and also for taking steps in respect of the unserved fourth respondent-the mother of the deceased.

6. Sri A.M. Venkatesh, learned Counsel appearing for the appellant Insurance Company submits that, service of notice on the third respondent may be taken to be sufficient and the third respondent deemed to be served and some time can be given for taking steps in respect of unserved fourth respondent.

7. We have perused the copy of the paper publication filed along with the memo and we find that paper publication, though had been carried in Vijaya Karnataka News paper on 17.2.2010, it does not indicate as to the date of hearing when the respondent who is sought to be served through paper publication was required to appear and only indicates that within 30 days from the date of notice he has to cause appearance in person or through counsel.

8. In this state of nebulous manner of publication with no specific date having been indicated for the appearance of third respondent before this Court, it is difficult to hold that the third respondent is said to be sufficiently served through paper publication for holding that he is so served.

9. It is rather surprising that the Registry has also not taken care to indicate the date of hearing before the Court on which the day the person who is sought to be served through paper publication is required to appear as is normal and inevitably done in all such cases of service of notice through paper publication.

10. We direct the Registrar (Judicial) to look into the matter and to ensure henceforth that all notices to be effected through paper publication inevitably indicates the date for the appearance of the respondent and on that date, the case is definitely listed before the Court, irrespective of the availability of the Bench in the combination which has passed the order earlier.

11. The jurisdiction is that of the High Court and it matters little whether it is posted before the Principal Bench or Circuit Bench but what is important is that the matter should be listed before the High Court at the particular bench indicated in terms of the publication and it is only when the respondent fails to appear on that day then it can be said that service through paper publication can be held to be sufficient as the person though served has failed to appear on the day. Otherwise it is not possible to hold that service is sufficient as is in the present case. Therefore, we reject the memo and permit the appellant Insurance Company to make efforts for fresh service of notice by any mode of service for which purpose we grant four more weeks.

12. We also deprecate the tendency of the Insurance Company being very eager to effect notice through paper publication irrespective of the cost involved in the paper publication and not being concerned about the effectiveness of such

service as the purpose of any service of notice, is to give an opportunity to the person to come and appear and place their case before the Court which purpose inevitably fails when the parties are not effectively and clearly informed about the date of hearing whenever publication is through such modes.

13. This is a matter about which the courts also should take note of and permit paper publication only when all other modes have failed and not as a matter of course.