

(2014) 06 KAR CK 0104

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30643/2008 (MV)

United India Insurance Company Ltd.

APPELLANT

Vs

Sharada

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Contract Act, 1872 — Section 29

Motor Vehicles Act, 1988 — Section 140, 163A, 2

Citation : (2015) 1 ACC 555 : (2016) ACJ 335 : (2015) 2 AnWR 167

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : B.S. Soragaon, Advocate for the Appellant; Harshavardhan R. Malipatil, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard Shri B.S. Saragaon, learned counsel for the appellant and Sri Harshavardhan R. Malipatil, learned counsel for the respondent No. 1 - claimant.

2. The appellant is the Insurance Company questioning the liability that is sought to be fastened on the Insurance company in respect of a claim before the Motor Accident Claims Tribunal (MACT) in the following background:

It transpires that on 01.11.2004 at about 11.00 p.m. the son of respondent No. 1 was said to have been riding a Hero Honda motor cycle bearing No. KA-28/K-4693. The vehicle belonged to respondent No. 2, who was the insured. It appears that the said vehicle had skidded and on account of the same, the rider was thrown off the vehicle and sustained grievous injuries. He was hospitalized, but died under treatment on 08.11.2004. He was said to be a photographer by profession and it was claimed that he was earning more than Rs. 3,000/- per month and was aged about 24 at the time of the accident. Therefore, his mother was before the Tribunal claiming compensation. The claim was contested by the insurer-appellant herein. While the insured did not appear and did not contest the matter.

The insurer contended that the accident was caused by the deceased on account of his rash and negligent riding and further he did not possess a valid driving licence as on the date of accident and that the age, occupation and the income of the deceased was also disputed and since there was violation of the conditions of the insurance policy, the insurer sought to negate its liability.

The Tribunal had framed the following points for its consideration:-

1. Whether the petitioner proves that on 01.11.2004 at about 11.00 p.m. on Bijapur B. Bagewadi road near Gollaleshwar Gas Center, while deceased son of petitioner was riding Hero Honda motorcycle, the accident took place due to skidding of his vehicle, due to said impact deceased sustained grievous injuries all over the body and was immediately shifted to Govt. Hospital, B. Bagewadi and he was died under treatment on 08.11.2004?
2. Whether the respondent No. 2 proves that the insurance company is not liable to pay any compensation, as petitioner has died due to his own negligence in riding the vehicle in rash and negligent manner?
3. Whether the petitioner proves that she is entitled for the compensation from the respondents?

The Tribunal has answered point No. 1 in the affirmative and point No. 2 in the negative and awarded a compensation of Rs. 4,18,000/- and interest thereon.

In so far as rejecting the contention of the insurer as regards liability, the Tribunal has pointed out that the vehicle was duly insured under a package policy pertaining to a motorcycle and the accident was caused on account of the vehicle having skidded, possibly to avoid a collision with an unknown vehicle and since the claim was under Section 163-A of the Motor Vehicles Act, 1988 (Hereinafter referred to as the "MV Act", for brevity), the question of addressing the negligence or otherwise of the rider of the vehicle or the insured would not arise and has placed reliance on a decision of this Court in National Insurance Co. Ltd. Vs. Honnappa Naik, Naveen, Devappa and K. Anand Shetty, and Oriental Insurance Co. Ltd. Vs. Smt. Salma and Others, , to conclude that since the insurance policy was current as on the date of the accident and according to the terms of the package policy, even a rider of a motorcycle was covered under the package policy, even though he may have been negligent in riding the motorcycle and accordingly held that the insurance company liable. It is this which is under challenge in this appeal.

3. While the learned counsel for the appellant would concede that the policy of insurance did cover the liability in respect of injury or death caused to any third-party or even the owner or rider of a motor cycle to the extent of Rs. 1,00,000/-, as the premium was collected in this regard and to that extent, the amount could be paid to the claimant as it is not denied that the death had occurred on account of the accident involving the insured vehicle. However, the compensation awarded is on the basis that the deceased was a third-party and therefore, the

limit of liability has been ignored in awarding the same and it is that which is sought to be questioned.

The learned counsel for the appellant would draw attention to the language of Section 163-A of MV Act, as the claim petition was one filed under Section 163-A and would point out that the language of Section 163-A would indicate that the insurer's liability is attracted if the owner of the motor cycle becomes liable to pay compensation, in case of death or permanent disability due to an accident arising out of the use of the motor cycle, to the injured or the legal heirs of a deceased victim, as the case may be. Therefore, what is contemplated is that there should be a owner of the vehicle, who is the insured and a victim, who has suffered death or injury on account of the use of the vehicle. If the owner himself is also the insured or the victim, the liability of the insurer does not arise generally, unless there is a specific contract to cover such liability. In the instant case, such liability is covered only to the extent of Rs. 1,00,000/-. If the liability is to be fastened on the insurance company by operation of law, then it is to be seen that only if the injured or the deceased was a third-party, who was injured as a result of an accident involving the insured vehicle that the insurance company would become liable. The question whether the owner of the vehicle or the insured would be a third-party in the eye of law has been answered by the Apex Court in the case of Ningamma and Another Vs. United India Insurance Co. Ltd., . In the instant case, the deceased was not the owner of the vehicle nor the insured and he had apparently borrowed the vehicle from the owner and the question whether such a person can be considered to be a third-party is directly answered in Ningamma's case. Therefore, the learned Counsel would submit that the Tribunal was in error in proceeding to hold that in terms of the package policy relating to two wheelers, the risk of the owner or even the rider of a motorcycle, who was riding a motorcycle with the permission of the owner was also covered, is erroneous and therefore, seeks that the judgment be modified to restrict the liability of the insurer to the extent covered under the policy.

4. While the learned counsel for the respondent would point out that the Tribunal has, with specific reference to the terms of contract, found the liability of the insurer and he would draw attention to a fully worded standard form contract for two wheeler package policy, as reproduced in the India Motor Tariff and draws specific attention to Section 2 on page 132.

Therefore, the learned Counsel would submit that the Tribunal was thus justified in arriving at its conclusion that with reference to the specific terms of contract, the insurer was liable. It is secondly contended that in so far as the reliance placed on a decision of the Apex Court in Ningamma 's case is concerned, there is no indication as to the nature of policy under which the claim was made in that case. In the absence of which, the opinion expressed therein as to the liability or otherwise of the insurer would not be relevant to the present case and hence, the opinion expressed therein being mechanically applied to the present case would lead to a miscarriage of justice and negation of the contractual liability,

which is categorical and clear.

It is also pointed out that in a recent judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Sinitha and Others, , wherein a claim was made in respect of the death of the rider of the vehicle involved in the accident and it was contended on behalf of the insurer that the said rider would stand in the shoes of the owner and that no claim for compensation could be raised in an accident caused by him under Section 163-A of the MV Act and in that regard, the Apex Court had pronounced that it was essential for the insurance company to establish that the rider had stepped into the shoes of the owner and therefore, cannot be treated as a third-party and unless the relationship between the rider and the owner of the motorcycle was established, the insurance company had not discharged the onus of proof which rested on it and therefore, it could not be held that the rider was not a third-party. The learned counsel would contend that even in the present case on hand, even assuming that such insurer's liability did not arise, as the rider of the vehicle was not a third-party, it was incumbent on the insurer to have established the relationship between the owner and the rider of the vehicle and in the absence of any such evidence to indicate whether he was an employee of the insured or stood in the capacity of a friend or a relative, it was not possible to conclude that he was not a third-party and would submit that even assuming that the contract of insurance did not create a liability of the insurer beyond a sum of Rs. 1,00,000/-, it was still for the insurance company to have established that the deceased was a third-party and that burden not having been discharged, the appeal should fail.

It is further contended that the reliance placed on Ningamma's case is also misplaced on account of the fact that by the said decision, the Apex Court had remanded the matter for a fresh consideration to the High Court and therefore, there was no finality to the decision and hence it could not be applied. It is further contended that in Ningamma's case itself it is observed that the rider of the vehicle, who may have borrowed the vehicle from the insured would not be in a position to lay claim for compensation if no other vehicle was involved. In the instant case on hand, according to the complaint, there was another unknown vehicle involved and in order to avoid a collision, that the deceased had lost control of the vehicle and had skidded. In that circumstance, on facts, Ningamma's case would in fact support the case of the appellant. The learned Counsel hence seeks dismissal of the appeal.

5. The learned counsel for the appellant, by way of reply, would contend that the finding of the Tribunal as to the package policy pertaining to two wheelers containing specific clauses, which cover the risk of a rider of a motor cycle apart from the owner-insured of the vehicle is not forthcoming. The relevant clauses from which the Tribunal has drawn inspiration refers to a driver of the vehicle and not a rider of a vehicle. The same cannot be extended to a two wheeler. There is no such clause which is to be found in the fully worded contract, which attracts the liability of the insurer in respect of a rider, who has borrowed the vehicle

from the insured. It is also pointed out that though Ningamma's case was remanded by the Apex Court, the question whether a person who has borrowed a two wheeler from the insured can be considered as a third-party in addressing his claim for compensation, has been answered in the negative and that has attained finality. The order of remand merely requested the High Court to reconsider whether the claimant could be afforded compensation under any other provision of law and on such remand, the High Court has modified its earlier judgment restricting the compensation to a sum payable under Section 140 of the MV Act. Therefore, the question whether a person who has borrowed the insured's vehicle, could claim compensation as a result of an accident to the vehicle when riding it, has been squarely answered. In so far as reference to Sinita's case is concerned, it is to be seen that the Apex Court in that case, has not referred to the decision in Ningamma's case and the observation that the insurance company ought to have established the relationship between rider and the insured of the vehicle was, therefore, without reference to Ningamma's case supra and would not assist the claimant and the learned Counsel hence seeks that the award be modified to restrict the liability, if at all, of the insurer to the extent of Rs. 1,00,000/-.

6. In the light of the above contentions, since the Tribunal has held that the contract of insurance did attract the liability of the insurer, the clauses of the contract, namely, the Standard Form for Two Wheeler Package Policy was closely examined. The reliance sought to be placed is on Section-II of the said contract, which pertains to liability to third-parties and the relevant clauses are reproduced hereunder for ready reference.

"SECTION II - LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of

i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

PROVIDED ALWAYS that the Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the vehicle for loading thereon or the taking away of the load from the vehicle after unloading there from.

2. The company will pay all costs and expenses incurred with its written consent.
3. In terms of and subject to the limitations of the indemnity granted by this section to the insured, the Company will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission provided that such driver shall as though he/she was the insured observe fulfill and be subject to the terms exceptions and conditions of this Policy in so far as they apply.
4. In the event of the death of any person entitled to indemnify under this policy the Company will in respect of the liability incurred by such person indemnify his/her personal representative in terms of and subject to the limitations of this Policy provided that such personal representative shall as though such representative was the insured observe fulfill and be subject to the terms exceptions and conditions of this Policy in so far as they apply."

(Underlining supplied)

As can be seen from the portions that are underlined and emphasized by this Court, the words and expressions used herein appear to be inconsistent and out of place with reference to a two wheeler. The heading to the Standard Form Contract and the clauses contained herein appear to be inconsistent. It is doubtful whether these clauses were intended to cover the risk to a two wheeler. It is not in dispute between the parties and as asserted by the learned counsel for the insurance company that the Insurance Regulatory and Development Authority (IRDA) prescribes the India Motor Tariff through the Tariff Advisory Committee pertaining to motor insurance in India and the policies issued by Insurance Companies insuring motor vehicles are to be strictly in accordance with the Standard Forms prescribed in the India Motor Tariff. Therefore, the Standard Form prescribed for two wheeler package policy is mechanically adopted by the insurance company as in the present case on hand. It becomes clear that there has been a bungling in formulating the Standard Form Contract. As can be seen from the language pertaining to Standard Form Contract in respect of a private car package policy also contains Section 2 pertaining to liability to third-parties and the said section has been bodily incorporated into the Standard Form for a Two Wheeler Package Policy. This would make the contract uncertain and vague and could not have been referred to and relied upon. In terms of Section 29 of the Indian Contract Act, 1872, the contract would be void for uncertainty. Therefore, the claim sought to be enforced with reference to the said package policy would not be tenable. Hence, the question that would arise for consideration is whether the deceased could be said to be a third-party if he had borrowed the two wheeler from the insured and died as a result of an accident in which the vehicle was involved. Though, it is ambiguously claimed that there was another vehicle involved in the accident, the pleading in the claim petition is contrary to the complaint. In that, though in the complaint it was claimed that there was another vehicle involved in the claim petition, there is no reference to any other vehicle and in the absence of any cogent evidence in that regard, it would have to be taken that the accident had occurred on account of

the rider having lost control over the vehicle and if the accident was caused by the rider himself, applying the law as laid down in Ningamma's case, the rider could not be treated as a third-party. The tort-feaser and the victim could not be the same.

In so far as the reference to Sinita 's case is concerned, as rightly pointed out by the learned counsel for the appellant there would have been no room for expressing doubt as to whether the rider of a two wheeler involved in that case could or could not be considered as a third party has been squarely answered in Ningamma's case. Though the learned counsel for the respondent would yet seek to sustain the claim on the footing that the language of the clauses in the Standard Form Contract cannot be held to be inconsistent and that the same can yet be reconciled if it is read as referring to a rider when there is reference to a driver and so on, as already pointed out, there are other inconsistencies which cannot be reconciled and hence, such a strained interpretation of the clauses of the contract are not possible and not desirable. It is therefore necessary to bring it to the attention of the concerned of the apparent and irresponsible bungling in the formulation of the contract as a Standard Form Contract and imposing the same on all insurance companies through out the country, leading to much injustice that would occur in claimants being denied the relief, to which they may even be entitled. Even though the law as laid down by the Apex Court would indicate otherwise, this Court is compelled to follow the law as laid down by the Apex Court and to ignore the clauses, which may even suggest that the liability of the insurance company, as contended by the learned counsel for the respondent would be attracted. It is only because, there are other inconsistencies which cannot be reconciled with the argument canvassed on behalf of the respondent.

Accordingly, the judgment and award of the Tribunal is modified to restrict the award of compensation to the limit of liability which is agreed to by the insurance company in a sum of Rs. 1,00,000/- as premium has been collected to the said extent, which is not disputed by the learned counsel for the appellant. The said amount will carry interest from the date of claim till the date of payment. The appeal is accordingly allowed in terms as above. The amount in deposit to be remitted to the Tribunal.

A copy of this judgment shall be sent to the Chairman, IRDA, Parishrama Bhavan, 3rd floor, Basheer Bagh, Hyderabad - 500004, Andhra Pradesh, for necessary action in carrying out necessary corrections to the Standard Form for Two Wheeler Package Policy as contained in the India Motor Tariff, as also to the Tariff Advisory Committee, Ador House, K. Dubash Marg, Fort, Hutatma Chowk, Mumbai - 400023, for necessary action.