[Motor Accident] Insurance Company Not Exempted From Third Party Liability For Breach Of Policy, May Recover From Insured: Karnataka HC Reiterates

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

H.P. SANDESH; J.

M.F.A. NO. 9207/2013; 2 December, 2022

BASAVARAJA BEERAPPA KAMBALI

versus

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD.

Appellant by V.B. Siddaramaiah, Advocate; Respondents by O. Mahesh, Advocate.

J U D G M E N T

This appeal is filed challenging the judgment and award dated 20.04.2013, passed in M.V.C.No.717/2011, on the file of the I Additional Senior Civil Judge, MACT-V, Davanagere ('the Tribunal' for short) praying to modify the judgment and award.

2. The factual matrix of the case of the claimant before the Tribunal is that in an accident he had sustained the injuries on account of rash and negligent driving of the motor vehicle insured with respondent No.1 and the Tribunal awarded compensation of amount of Rs.2,88,000/- with interest at the rate of 7% per annum. Being aggrieved by the same, the claimant is in appeal before this Court.

3. The learned counsel for the appellant would vehemently contend that the Tribunal has committed an error in taking the income of the appellant as Rs.4,000/- per month instead of Rs.6,501/- per month, as the appellant was drawing monthly salary of Rs.6,501/- by working in BSS Micro Finance Pvt. Ltd., Kondajji Road, Davanagere. The Tribunal committed an error in awarding lesser compensation under the head future loss of income. The Tribunal committed an error in not awarding any amount under the head future medical expenses and incidental expenses. The learned counsel would contend that the Tribunal committed an error in directing respondent Nos.1 and 2 to pay the compensation and the liability of the Insurance Company is exonerated in coming to the conclusion that the offending vehicle was not registered and as such, temporary registration which was issued to the said vehicle was also expired on the date of the accident.

4. The learned counsel would contend that the Full Bench of this Court in the case of **NEW INDIA ASSURANCE CO. LTD. v. YALLAVVA AND ANOTHER** passed in **M.F.A.No.30131/2010** dated 12.05.2020, while answering the questions referred held that, the Insurer is liable to pay the third party and recover from the insured even if there is breach of any condition recognized under Section 149(2), even if it is a fundamental breach (that is breach of condition which is the cause for the accident) and the insurer proves the said breach in view of the mandate under Section 149(1) of the Act. But, no such order can be passed against the insurer, if, on the facts and circumstances of a case, a finding is given by the court that the third party (injured or deceased) had played any fraud or was in collusion with the insured, individually or collectively, for a wrongful gain to themselves or cause wrongful loss to the insurer. The Court can also fasten the absolute liability on the insurer, if there is any breach of condition which is enumerated under Section 149(2) of the Act or any other condition of the policy if the Insurance Company has waived breach of any such condition or has taken the special responsibility to pay by collecting extra premium by covering any type of risk depending upon facts of each case.

5. The learned counsel referring this judgment would contend that even if the Court comes to the conclusion that there is a breach of any condition recognized under Section 149(2) of the MV Act, even if it is a fundamental breach, the insurer is liable to pay the third party and recover the same from the insured.

6. Per contra, learned counsel for the Insurance Company would vehemently contend that Section 39 of the MV Act is very clear that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

7. The learned counsel for the Insurance Company referring Section 39 of the MV Act would contend that when such prohibition is made under the MV Act, the Insurance Company is not liable to pay the compensation. The learned counsel would contend the **Yellavva** case (supra) cannot be applied to the case on hand and it is an admitted fact that as on the date of the accident, the temporary registration of the vehicle was expired and hence the question of shifting the liability does not arise. The learned counsel submits that the insured has not filed any appeal challenging the judgment and award of the Tribunal. The learned counsel contend that the question of directing to pay and recover does not arise since it is a fundamental breach.

8. Having heard the respective learned counsel and also on perusal of the material available on record, the points that arise for the consideration of this Court are:

(i) Whether the Tribunal has committed an error in not awarding just and reasonable compensation as contended in the appeal?

(ii) Whether the Tribunal has committed an error in fastening the liability on the insured instead of insurer as contended in the appeal?

(iii) What order?

Point No.(i):

9. It is the claim of the claimant that he met with an accident when he was proceeding towards his office and the driver of the Tata Ace caused the accident and as a result, he had sustained grievous injuries and he was shifted to C.G. Hospital, Davanagere and thereafter to S.S. Hospital, Davanagere and also he took treatment at Kasturba Hospital, Manipal as an inpatient. It is also his claim that he was earning Rs.6,501/- per month by working in BSS Micro Finance Pv.t Ltd., but due to the impact of the accident, he became permanently disabled. The accident in question was alleged to have been occurred on account of the negligence on the part of the driver of the Tata Ace. The claimant in support of his contention examined himself as P.W.1 and also examined the doctor as P.W.2 to substantiate his claim of disability and another witness as P.W.3 and got marked the documents at Exs.P.1 to 51. On the other hand, the respondent examined three witnesses as R.W.1 to R.W.3 and got marked the temporary registration certificate as Ex.R.1, copy of the policy as Ex.R.2, certified copy of 'B' register extract as Ex.R.3, certified copy of RC extract as Ex.R.4 and certified copy of F.C. extract as Ex.R.5. The Tribunal after considering the material available on record comes to the conclusion that the temporary registration of the vehicle was expired and as on the date of the accident, there was no registration certificate.

10. Having perused the wound certificate, which is marked as Ex.P.6, it discloses that he had suffered right proximal humerus fracture and there was a lacerated wound over the

knee and there was a fracture of C1 and C2. The same is evident from the treatment summary issued by Kasturba Hospital, which are marked as Exs.P.8 and 9. Having considered Exs.P.8 and 9, it is clear that he had suffered humerus fracture and fracture of C1 and C2. When such being the case, it is appropriate to award an amount of **Rs.50,000/-** as against Rs.30,000/- under the head pain and suffering.

11. The Tribunal awarded an amount of Rs.45,000/- under the head medical expenses, diet, nourishment and attendant charges. On perusal of the medical bills, which have been marked as Exs.P.12 to 37, it amounts to Rs.37,765.61/- towards purchase of drugs and medicines and the same have not been disputed. He was hospitalized in Kasturba Hospital from 22.01.2011 to 12.03.2011 and as per Ex.P.8, he was once again hospitalized in the same hospital from 01.06.2011 to 24.06.2011 and once again he was admitted on 07.07.2012 and the Tribunal failed to take note of the period of treatment and awarded only Rs.7,000/- under the head food and nourishment, attendant charges, conveyance charges and the medical bills amounts to Rs.37,765/-. In all, granted an amount of Rs.45,000/-. Taking note of the medical bills produced, it is appropriate to award an amount of **Rs.50,000/-** under the head medical expenses and an amount of **Rs.13,000/-** under the head conveyance, attendant charges and other incidental expenses since he was an inpatient for one month 19 days at the first instance and in the second instance for a period of 23 days.

12. The Tribunal awarded an amount of Rs.20,000/- under the head loss of income during the laid up period and he had suffered fracture of humerus and fracture of C1 and C2 and he was in the hospital for more than 2½ months. It was an accident of the year 2011 and the notional income would be Rs.6,500/- per month. Having considered the fractures sustained, it requires minimum six months for uniting of fracture and for rest. Hence, taking the income of Rs.6,500/- per month and laid up period as six months, the loss of income during the laid up period comes to **Rs.39,000/-** (Rs.6,500/- x 6).

13. The Tribunal awarded an amount of Rs.1,72,800/- under the head loss of future income on account of permanent physical disability. The doctor assessed the disability of 60% to particular limb and the Tribunal considering 1/3rd of it, rightly taken the disability of 20% to the whole body. Taking the income of Rs.6,500/- per month, disability of 20% to the whole body and applying the relevant multiplier of '18' as he was aged about 22 years, the loss of future income comes to **Rs.2,80,800/-** Rs.6,500/- x 12 x 18 x 20%).

14. The Tribunal awarded an amount of Rs.20,000/- under the head loss of amenities and enjoyment of life and the compensation awarded is on the lesser side since he is aged about 22 years and he has to lead rest of his life with disability of 20% and hence it is appropriate to enhance the same to **Rs.30,000/-** as against Rs.20,000/-.

15. In all, the claimant is entitled for compensation of **Rs.4,62,800/-** as against Rs.2,88,000/-.

Point No.(ii):

16. Now coming to the aspect of liability is concerned, the Tribunal while answering issue No.4, comes to the conclusion that on the date of the accident, the temporary registration was expired and records also discloses that FC was valid from 18.11.2011 to 20.01.2013 for a period of two years since the vehicle was a new vehicle. It is the contention of the Insurance Company that as on the date of the registration of the vehicle as per Ex.R.4, 21.01.2011, it had no FC. The temporary registration certificate would be issued only after verifying the FC. The non-registration of the offending vehicle as on the date of the accident is an undisputed fact and the vehicle had no permanent registration and the

temporary registration was also expired. The main contention of the learned counsel for the claimant is that even if there is a fundamental breach, if the injured is a third party, in view of the judgment of this Court in the case of **Yellavva** (supra), the Insurance Company is liable to pay the third party and recover the same from the insured even if there is breach of any condition recognized under Section 149(2) of the MV Act. On the other hand, it is the contention of the Insurance Company that Section 39 of the MV Act discloses with regard to the necessity of registration of the vehicle.

17. This Court would like to rely upon the judgment of this Court in the case of **SRI RAJA LINGAIAH v. SRI MANJU @ MANJA AND ANOTHER** reported in **2014 SCC Online KAR 7099,** wherein in paragraph No.4 in a similar circumstance of expiry of the temporary registration, observed that on the date of the accident, the registration certificate was expired. However, the insurance certificate was in force. The Insurance Company, while issuing certificate of insurance, was aware that the insured vehicle had registration certificate only for a period of 30 days. If it was the intention of the Insurance Company to cover the risk of the vehicle during the currency of registration certificate, the Insurance Company should have issued the policy covering the risk of the vehicle till the date of expiry of the registration certificate. It should have been specifically stated in the certificate that certificate of insurance policy would be effective as long as registration certificate is current. The Insurance Company having received the premium for one year cannot contend that it is not liable to pay the compensation, more particularly when the claim is made by a third party.

18. The Division Bench of this Court in the case of **ORIENTAL INSURANCE COMPANY LIMITED v. SMT. SAVITHRI HUDGE AND ANOTHER** reported in **2014 SCC Online KAR 12505**, while answering point No.1, considered the material on record and held that, if there is breach of the terms and condition of policy, issued by the insurer, then, it is very much open for it to proceed against the owner of the offending vehicle and it is not justifiable for the insurer to shirk its responsibility from indemnifying the injured claimant, on the ground that the vehicle was not duly registered as on the date of the accident and extracted the provisions of Section 149 of the MV Act and held that the insurer is liable to indemnify the award and thereafter recover the same from the owner, if there is breach or violation of terms and conditions of the policy, in accordance with law.

19. The Madras High Court in its judgment in the case of **FUTURE GENERAL INDIA INSURANCE COMPANY LIMITED v. VALLI AND OTHERS** reported in **2020 SCC Online Madras 5214,** in paragraph No.5 discussed with regard to the contention of the Insurance Company that the insured vehicle was not having valid registration on the date of the accident and there was breach of policy terms and violation of provisions of Motor Vehicles Act. Having considered the material on record, held that on the date of the accident on 06.12.2011, the vehicle had no valid registration number. It amounts to violation of Motor Vehicles Act. However, the Insurance Company is bound to pay the claimants and to recover the same from the owner.

20. Having considered the principles laid down in the judgments of this Court and Madras High Court referred supra and also considering the material facts of the case on hand, admittedly the claimant is a third party and Tata Ace driver drove the vehicle in a rash and negligent manner and dashed against the claimant. This Court in the case of **Raja Lingaiah** (supra), held that the Insurance Company having received the premium for one year cannot contend that it is not liable to pay the compensation, more particularly when the claim is made by a third party. The Division Bench of this Court in the case of **SAVITHRI HUDGE** (supra), held that the Insurance Company has to indemnify the

claimant and recover the same from the insured. The Madras High Court in the case of **VALLI** (supra) held that the Insurance Company is bound to pay the claimants and to recover the same from the owner. Hence point (ii) is answered accordingly that the Insurance Company has to indemnify the claimant and recover the same from the insured.

Point No.(iii):

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

O R D E R

(i) The appeal is allowed in part.

(ii) The impugned judgment and award of the Tribunal 20.04.2013, passed in M.V.C.No.717/2011, is modified granting compensation of **Rs.4,62,800/-** as against Rs.2,88,000/-, with interest at 7% per annum from the date of petition till deposit.

(iii) The Insurance Company is directed to pay the compensation amount with interest within six weeks from today and recover the same from the insured.

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