

The Manager Vs. Smt. L. Radha

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Court : Karnataka

Decided On : Jun-28-2021

Judge : H.P.Sandesh

Appeal No. : MFA 4946/2011

Appellant : The Manager

Respondent : Smt. L. Radha

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE28H DAY OF JUNE, 2021 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH M.F.A.NO.4946/2011 (MV) BETWEEN: THE MANAGER, ORIENTAL INSURANCE CO. LTD., NO.618, CHAMARAJA DOUBLE ROAD, MYSURU-570 024. NOW REPTD. BY REGIONAL MANAGER, ORIENTAL INSURANCE CO. LTD., REGIONAL OFFICE, NO.44/45, LEO SHOPPING COMPLEX, RESIDENCY ROAD, BENGALURU-560025. APPELLANT (BY SRI A.N. KRISHNA SWAMY, ADVOCATE) AND:

1. SMT. L. RADHA, W/O LATE S.NAGARAJU, NOW AGED ABOUT32YEARS.
2. SIDDEGOWDA, S/O LINGE GOWDA, NOW AGED ABOUT67YEARS.
3. M. SHIVAMADAMMA, W/O SIDDEGOWDA, AGED ABOUT52YEARS.

4. PRAJWAL, S/O S. NAGARAJU, AGED ABOUT 8 YEARS. 2

5. UJWAL, S/O S. NAGARAJU, AGED ABOUT 5 YEARS. RESPONDENT NOS. 4 AND 5 HEREIN SINCE MINORS REPRESENTED BY THEIR NATURAL GUARDIAN/MOTHER THE 1ST RESPONDENT HEREIN. ALL ARE R/A C/O. RANGE GOWDA, RETD. DRIVER, MESCOM, HOTAGALLI VILLAGE, KRS ROAD, MYSURU TQ & DISTRICT.

6. DIVAKARA, S/O THIMMAIAH, NOW AGED ABOUT 45 YEARS, EMPLOYED IN MESCOM, HAMPAPURA SECTION, H.D.KOTE TQ, MYSURU DISTRICT. ... RESPONDENTS (R-6 - SERVED; R-4 AND R-5 ARE MINORS REPRESENTED BY R-1; VIDE

ORDER

DATED 24.01.2020 SERVICE OF NOTICE TO R-1 TO R-3 IS HELD SUFFICIENT) THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 26.06.2010 PASSED IN MVC NO. 476/2009 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-II AND MEMBER ADDL. AMACT, MYSURU, AWARDED A COMPENSATION OF Rs. 50,000/- UNDER NO FAULT LIABILITY WITH COSTS AND INTEREST AT 6 P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT OF THE AWARD AMOUNT. THIS MFA HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 30.06.2021 THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

3.

JUDGMENT

This appeal is filed by the Insurance Company challenging the judgment and award dated 26.06.2010 passed in M.V.C.No.476/2009 on the file of the Fast Track Court-II and Additional MACT, Mysuru (the Tribunal for short) questioning

the awarding of compensation of Rs.50,000/- under no fault liability.

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

3. The factual matrix of the case is that when the deceased Nagaraj was coming along with one Ashok in the motor cycle Hero Honda bearing registration No.KA-09-V-8623, due to the sudden impact of a pig which ran away from the land, the deceased fell down and sustained head injuries and inspite of treatment succumbed to death on 18.05.2005. Hence, the claimants filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (MV Act for short).

4. The petitioners in the claim petition have contended that they are the legal heirs of the deceased. The deceased was 4 the sole bread earner of the family and he was aged about 39 years as on the date of the accident and was working as a primary school teacher at Malaganakatte Village, Kollegal Taluk, Chamrajnagara District and was earning monthly income of Rs.8,000/- and they have lost the income and his love and affection.

5. In pursuance of the claim petition, respondent No.1 filed the objections admitting the averments made in column No.14 and 14(a) and also the ownership of the vehicle. Respondent No.1 also admitted the accident. The vehicle was insured with respondent No.2. The respondent No.1 also admitted that the deceased is his co-brother and he had taken his vehicle on that day. The fact explained by Sri Ashok who is none other than the brother-in-law of respondent No.1 and also the averments made in paragraph No.22 are all admitted by him. The respondent No.1 would contend that respondent No.2 who is insurer of the vehicle is liable to pay the compensation.

6. The respondent No.2 filed the written statement denying the occurrence of the accident as alleged in the petition. The respondent No.2 also denied the issuance of policy and in 5 the case of production of the policy particulars and the policy is issued which is alive on the date of the alleged accident, then the liability is subject to terms and conditions of the policy and also objections raised in the defence along with section 149(2) of the MV Act. The other averments are also denied. It is

further contended that the deceased was the rider of the vehicle, who is stepping into the shoes of the insurer of the vehicle. When the accident is a self- accident, even if the policy is alive, it does not cover the risk of the deceased.

7. The claimants in order to substantiate their claim, examined claimant No.1 as P.W.1 and got marked the documents at Exs.P.1 to 11. On the other hand, the respondents examined one witness as R.W.1 and not marked any documents. The Tribunal after considering the material on record, awarded compensation of Rs.50,000/- under no fault liability. Hence, the same is questioned before this Court.

8. The appellant Insurance Company in this appeal has raised the contention that the Tribunal has committed an error in awarding compensation under the head no fault liability even though the claimants are not entitled for compensation under 6 the head no fault liability. The Tribunal was required to have noticed that for ones own negligence, a claim petition either under Section 163-A or under Section 166 of the MV Act is not maintainable. The Tribunal was required to have noticed that a person who drives the vehicle would step into the shoes of the insured and the risk of the owner is not required to be covered and the risk of a person who steps into the shoes of the owner is also not required to be covered as held by the Apex Court in the case of NINGAMMA AND ANOTHER v. UNITED INDIA INSURANCE CO. LTD. reported in 2009 ACJ 2020 SC.

9. The learned counsel for the appellant in his argument would vehemently contend that when the claim petition is filed under Section 163-A of the MV Act, an application under Section 140 of the MV Act is not maintainable in view of the clear decision rendered by the Apex Court in the case of DEEPAL GIRISHBHAI SONI AND OTHERS v. UNITED INDIA INSURANCE CO. LTD. reported in 2004 ACJ934SC. Hence, the order passed by the Tribunal awarding an amount of Rs.50,000/- under Section 140 of the MV Act is misconceived and against the provisions of law. 7

10. The learned counsel also relied upon the judgment of the Gauhati High Court in the case of NEW INDIA ASSURANCE CO. LTD. v. P.C. LALFAKAWMI AND OTHERS reported in 2021 ACJ928 wherein it is held that the claim application for

the death of borrower of the vehicle who stepped into the shoes of the owner of the vehicle under Section 163-A of the MV Act is not maintainable referring the judgment in the case of Ningamma (supra). The learned counsel also relied upon the judgment of the Madras High Court wherein it is held that when the claimant was travelling in the car, the car in which the claimant was travelling belongs to him and the claimant is registered owner of the car, he is not entitled for any compensation.

11. The learned counsel also relied upon the judgment of the Punjab and Haryana High Court in the case of BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., v. KANCHAN AND OTHERS reported in (2014) 4 ACJ2803 wherein it is observed that the motorcyclist riding borrowed motor cycle fell down and suffered fatal injuries. The Tribunal observed that the borrower of the vehicle will step into the shoes of the insured and allowed Rs.1,00,000/- on the basis of personal accident 8 cover available to the insured under the policy. The High Court held that they are not entitled for benefit and the benefit is available only to the insured for injuries suffered by him personally and is not available to a third party by borrowing the vehicle. It is further held that right of indemnity is not a right of enforcement of claim; claimants are only entitled to compensation under no fault liability under Section 140 of the MV Act.

12. This Court had issued notice against the respondents and the respondents did not choose to appear before this Court. Hence the matter is heard in their absence.

13. Having heard the arguments of the learned counsel for the appellant and on perusal of the records, the points that arise for the consideration of this Court are: (i) Whether the Tribunal committed an error in awarding compensation under no fault liability invoking Section 140 of MV Act?. (ii) Whether the Insurance Company is liable to pay the compensation to the claimants when the personal accident claim benefit is insured with the insurer when the borrower of the 9 vehicle stepped into the shoes of the original owner?. Point Nos.(i) and (ii):

14. Having heard the learned counsel for the appellant, it is not in dispute that the deceased was proceeding in the motor cycle which belonged to the insured. It is

also emerged in the evidence that the deceased was the co-brother of the insured and he was proceeding along with another person who is the brother-in-law of the insured. Hence, it is clear that there is a relationship between the insured and the deceased. The accident occurred when the deceased was riding the vehicle along with a pillion rider and a pig suddenly ran across the road and the vehicle met with an accident with the said animal and thereby the deceased sustained injuries by falling on the ground and died on account of the accidental injuries. The Tribunal while disposing of the claim petition allowed the claim petition considering the provisions under Section 140 of the MV Act that the claimants are entitled for compensation under the head no fault liability by relying upon the judgment of this Court reported in 2010 ACJ977 10 15. The Punjab and Haryana High Court in its judgment in the case of Kanchan (supra) has held that the Tribunal found that entitlement of compensation is statutorily recognised under Section 163-A of the MV Act on strict liability basis and allowed the compensation to the claimants against the Insurance Company. The High Court also considered whether the claim under Section 163-A of the MV Act is maintainable by the legal heirs of the victim for his death due to his own negligence and held that they are not entitled. It is further held that the right of indemnity is not a right of enforcement of claim. It is further observed that the claimants are only entitled to compensation under no fault claim under Section 140 of the MV Act and hence it is clear that Punjab and Harayana High Court also held that the claimants are entitled for compensation under Section 140 of the MV Act. But the High Court has held that the claimants are not entitled for PA claim as the borrower though step into the shoes of the insured and the said benefit is available only for the injury suffered by him personally and is not liable to a third party by borrowing the vehicle.

16. It has to be noted that the Apex Court in the judgment in the case of Ningamma (supra) has held that a 11 person who drives the vehicle as borrower would step into the shoes of the insured and the risk of the owner is not required to be covered and the risk of a person who steps into the shoes of the owner is also not required to be covered. But in the case on hand, it has to be noted that the Tribunal has not allowed the claim petition filed by the claimants under Section 163-A of the MV Act, but allowed the claim petition invoking Section 140 of the MV Act. Once the borrower of the vehicle steps into the shoes of the owner and not

entitled for compensation under the claim petition under Section 163-A or under Section 166 of the MV Act, the very finding of the High Court of Judicature at Guahati in the case of P.C. Lalfakawmi (supra), in coming to the conclusion that the claimants who filed claim under Section 163-A of the MV are not entitled for compensation. This Court is also not disputing the same but the question before this Court is whether they are entitled for compensation under Section 140 of the MV Act.

17. Having perused the judgment and award of the Tribunal, the Tribunal comes to a conclusion that the claimants are entitled for compensation under Section 140 of the MV Act. Having read the provisions of Section 140 of the MV Act, it is 12 clear that the owner of the vehicle or vehicles is liable to pay the compensation under Section 140 of MV Act. In the case on hand, in view of the judgment of the Apex Court in the case of Ningamma (supra), the deceased steps into the shoes of the owner and for all practical purposes. When such being the case, Section 140 of the MV Act cannot be invoked. If the claimants are third party, then they are entitled for compensation under Section 140 for no fault liability. Hence, the claimants are not entitled for compensation under Section 140 of the MV Act. Accordingly, I answer point No.(i) as affirmative.

18. The other contention of the learned counsel for the appellant relying upon the judgment of Punjab and Haryana High Court is that the borrower is not entitled for compensation under the head personal accident claim and the same is exclusively the right of the owner. The said contention cannot be accepted. The judgment of Punjab and Haryana High Court is persuasive in nature and the same is not binding on this Court. It has to be noted that once the borrower of the vehicle steps into the shoes of the insured, in view of the judgment of the Apex Court in the case of Ningamma (supra), the very contention that the 13 claimants are not entitled for compensation even under PA claim cannot be accepted. The Insurance Company cannot blow hot and cold; in one breath the borrower steps into the shoes of the insured and when there was a contract of indemnity between the insured and the Insurance Company for payment of personal accident claim under special contract and once the borrower steps into the shoes of the owner for the purpose of claiming the compensation under Section 166 and 163-A of the MV Act and not

entitled for compensation and automatically he steps into the shoes of the insured and in view of the contract of indemnity between the insured and the Insurance Company under the special contract, I am of the opinion that the claimants are also entitled for compensation under PA claim as held by the Apex Court that the borrower steps into the shoes of the insured. There cannot be two yardstick as contended by the counsel appearing for the appellant that he steps into the shoes of the owner and for the purpose of making payment under PA claim cannot contend that borrower cannot step into the shoes of owner. The observation of the Punjab and Haryana judgment that he became third party cannot be accepted, as the Apex Court held that he steps into the shoes of the owner. It cannot be interpreted as to the convenience of the insurance company. For all the purpose, he steps into the shoes of the owner. But, in the case on hand, the Insurance Company has collected the premium of Rs.50/- for PA claim for owner, but the claimants have not filed any claim before the Company. No doubt, it is a contract between the parties and they can claim PA claim compensation by invoking the contract. This Court held that the borrower steps into the shoes of the owner. The claimants are entitled to PA claim and the Company has to pay the same as held by the Apex Court in the case of RAMKHILADI AND ANOTHER v. UNITED INDIA INSURANCE COMPANY reported in (2020) 2 SCC550 and also the judgment of the Apex Court judgment in the case of NATIONAL INSURANCE COMPANY LIMITED V. ASHALATA BHOWMIK AND OTHERS reported in AIR 2018 SC4133. The claimants need not approach separately to Insurance Company and the Insurance Company is bound to pay the compensation under PA claim as there is separate special contract. Hence, I answer point No.(ii) as affirmative.

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

15.

ORDER

(i) The appeal filed by the Insurance Company is allowed. (ii) The judgment and award of the Tribunal is modified exonerating the liability of the Insurance Company to pay the compensation under Section 140 of the MV Act. However, the Insurance Company is liable to pay the compensation of Rs.1,00,000/- under PA

claim to the claimants under special contract treating the deceased stepped into the shoes of the insured. (iii) The Insurance Company is directed to pay the compensation amount with interest at the rate of 7.5% per annum in view of the judgment of the Apex Court in the case of Ramkhiladi (supra), within six weeks from today. (iv) The amount in deposit, if any, be transmitted to the concerned Tribunal, forthwith. (v) The Registry is directed to transmit the records to the concerned Tribunal, forthwith. Sd/- JUDGE MD

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