Noorulla Vs. P.K. Prabhakar and Another

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Court : Karnataka

Decided On : Mar-22-1999

Reported in : 1999ACJ1419; AIR2000Kant1; [1999]98CompCas725(Kar); ILR1999KAR2725; 2000(2)KarLJ16

Judge : G.C. Bharuka,;P, Vishwanatha Shetty and;V. Gopala Gowda, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 3, 4, 4-A and 19; Motor Vehicles Act, 1939 - Sections 93, 94, 95 and 110-AA; Motor Vehicles Act, 1988 - Sections 147(1) and 167; Road Traffic Act, 1930; Thrid Parties (Right against Insurers) Act, 1934; Motor Vehicles (Amendment) Act, 1956

Appeal No. : Miscellaneous First Appeal No. 1222 of 1992

Appellant : Noorulla

Respondent : P.K. Prabhakar and Another

Advocate for Def. : Sri M.U. Poonacha and ;Sri M. Sowri Raju, Advs.

Advocate for Pet/Ap. : Sri P.K. Bhau, Advocate

Judgement :

G.C. Bharuka, J.

1. This appeal arises under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). The claimant is the appellant before us. The owner of the vehicle and the Insurance Company are respondents 1 and 2 respectively. The principal grievance raised by the claimant is that the Motor Accidents Claims Tribunal (hereinafter referred to as the 'Tribunal') has committed an error of law in exonerating the Insurance Company from indemnifying the compensation awarded against the owner.

2. On a close reading of the order of reference drawn by the learned Single Judge, the following questions of law seems to require our consideration.-

(i) Whether, under Section 95(1) of the Act, the owner of a goods vehicle is required to compulsorily insure against the risk of death or bodily injury of his employees arising out of and in the course of their employment because of the use of the vehicle in a public place?

(ii) Whether the insurer will be liable to indemnify the owner against the compensation awarded only in proceedings commenced under the Compensation Act or will be so liable even if the compensation is awarded by the Tribunal under the Act and in either case, to what extent?

3. The relevant facts are quite brief and are almost admitted. Respondent 1 is the owner of a goods vehicle bearing Registration No. MEC 4469. The claimant was under his employment working as a driver. On 28-11-1988, while he was travelling in the vehicle as an additional driver, it met with an accident causing injuries to the claimant and to one more person. On the fateful day, the vehicle was being driven by another driver named Nawab Jan.

4. Subsequently, the claimant filed an application for compensation before the Tribunal under Section 110-A of the Act. The Tribunal after holding an enquiry held that the accident had taken place because of rash and negligent driving. Accordingly, it awarded global compensation of Rs. 52,400/- with costs and interest. Respondent 1, being the owner, was held as vicariously liable to pay the said amount.

5. So far as the liability of the insurer to indemnify the owner and pay the compensation is concerned, though it has been found that there was an insurance policy filed by the claimant as Ex. P-4, which was dulycorroborated by Motor Renewal Endorsement placed at Ex. R-1, but since as per tbe details of premium set out therein, the risk of additional driver was not covered, therefore, the Tribunal exonerated the Insurance Company from indemnifying the owner. It is in the said factual settings, that the legal issues pertaining to liability of the Insurance Company, based on the construction of Section 95 of the Act, has been raised by the claimant with whom the owner has joined hands.

6. Before adverting to the issues raised, it may be pertinent to ascertain the rights of an employee of a goods vehicle suffering injuries in an accident of the vehicle arising out of and in the course of his employment. There may be varying situations which can give rise to claims for compensation under the Act or the Compensation Act or under both the Acts but subject to Section 110-AA of the Act. These situations will arise (i) if the accident is not attributable to any negligence on the part of the driver/owner, or, (ii) if it is found that the victim had not suffered injuries arising out of or in the course of his employment, or, (iii) if the employee suffers injury, fatal or otherwise, in the course of his employment and is attributable to the negligence of the driver/owner. I will do better to substantiate this aspect by referring to some of the decisions of the Supreme Court.

7. In the case of Minu B. Mehta and Another v Balkrishna Ramchandra Nayan and Another, the Apex Court, after considering the legislative history and considering the provisions of the Act, has held that.-

'The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of Tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent'.

8. It has further been held that the owner of the motor car does not become liable because of his just owning the same. On the other hand, it has been laid down as

of law that 'the proof of negligence remains the lynch pin to recover compensation'.

9. Therefore, for maintaining the claim for compensation under Chapter VIII of the Act, the claimant has to prove that the accident, resulting in death or bodily injury, had occasioned because of negligence of the driver and vicariously makes the owner as well liable to the compensation. In case, the claimant fails to substantiate the negligence aspect, his claim preferred under Chapter VIII of the Act based on the principle of fault has to fail.

10. On the other hand, for claiming compensation by a workman under the provisions of the 'Compensation Act', the proof of negligence on the part of the owner, vicariously or otherwise, has no role to play. The considerations for awarding statutory compensation under this Actare quite different as has been enumerated by the Supreme Court in the case of Mackinnon Mackenzie and Company Private Limited v Ibrahim Mahommad Issak . In para 5 of the judgment, it has been held that.-

'To come within the Act the injury by accident must arise both out of and in course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such -- to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act'.

11. Therefore, it is clear that for maintaining a claim under the 'Compensation Act', proof regarding negligence of the employer or any other person acting under him is wholly immaterial. To come within its purview, it is merely required to be established that the injury by accident has arisen both out of and in course of employment and that it is not attributable to the employee's imprudent act by which he bad exposed himself to added peril.

12. Keeping in view the legal framework culled out as above, it has to be held that a person who is workman within the meaning of the Compensation Act and has suffered bodily injury arising out of and in the course of his employment and has proved negligence on the part of the driver/owner of the vehicle involved in an accident, can proceed to recover compensation either under the provisions of Chapter VIII of the Act or under the Compensation Act but because of Section 110-AA of the Act not under both. The controversies in this regard noticed in various judicial pronouncements have been set at rest by insertion of Section 110-AA by Act 56 of 1969 which reads thus.-

'Section 110-AA. Option regarding claims for compensation in certain cases.--Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of, or bodily injury to, any person, gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923 (8 of 1923), the person entitled to compensationmay, without prejudice to the provisions of Chapter VII-A, claimsuch compensation under either of those Acts but not under both'.

Pari materia provision is contained in Section 167 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'New Act').

Re: Question No. (i):

13. The legislative history of making insurance compulsory to cover third party risk involving motor accident has been traced by the Supreme Court in Minu B. Mehta's case, supra, wherein it has been noticed that.-

'In England the owner of the vehicle voluntarily insured against the risk of injury to other road users. With the increase of traffic and accidents it was found that in a number of cases hardship was caused where the person inflicting the injury was devoid of sufficient means to compensate the person afflicted. In order to meet this contingency the Road Traffic Act, 1930, the Third Parties (Rights against Insurers) Act, 1934 and Road Traffic Act, 1934 were enacted in England. A system of compulsory insurance was enacted by the Road Traffic Act, 1930. Its object was to reduce the number of cases where judgment for personal injuries obtained against a motorist was not met owing to the lack of means of the defendant in the running-down action and his failure to insure against such a liability. It is sufficient to state that compulsory insurance was introduced to cover the liability which the owner of the vehicle may incur.

The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English Law. The relevant sections found in the three English Acts - Road Traffic Act, 1930, the Third Parties (Rights against Insurers) Act, 1930 and the Road Traffic Act, 1934 were incorporated in Chapter VIII'.

14. Section 94 of the Act provides for compulsory insurance against the third party risks. The expression 'third party' has been defined under Section 93(d) of the Act. It merely provides that 'third party' will include the Government. The definition is inclusive and not exhaustive. Therefore, we have to understand this term in the sense it is judicially construed by the House of Lords in the context of Road Traffic Act, 1930, which, as noticed by our Supreme Court, is the adoptive source of our legislation. In the case of Digby v General Accident Fire and Life Assurance Corporation Limited , Viscount Simon L.C. has held that.-

'The first and main sub-section is clear enough. It provides for what is ordinarily called, in this connection, third-party insurance. In the Road Traffic Act, 1930, Section 35, which provides for compulsory insurance, the expression used is 'third-party risks'. Whichever phrase is used, I think that the governing conception isthat the insurer is one party to the contract and the policy holder another party, and that claims made by others in respect of the negligent use of the car may be naturally described as claims by third parties'.

15. Therefore, even an employee of a vehicle owner is covered by the expression 'third party'. This is further clear from Section 95 of the Act which requires that a policy of insurance is to be issued by an authorised insurer insuring the person specified in the policy i.e., insured, against any liability which may be incurred by him in respect of the death of or bodily injuries to 'any person' caused or arising out of the use of the vehicle. But, so far as the requirement of compulsory insurance as contemplated under the Act is concerned, the legislature has placed the employees of the insured in a separate class for the said purpose as it would be evident from the statutory provisions and its successive developments, to be shortly noticed.

16. To substantiate the above view, I am quoting hereunder the relevant provisions contained in Section 95 of the Act as amended from time to time. Sub-sections (1) and (3) thereof to the extent it relates to goods vehicle and as it stood originally read thus.-

'95. Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which.-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not, except as may be otherwise provided under sub-section (3), be required.-

(i) to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment; or

(ii).....

(iii).....

(2).....

(3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of his Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle'.

17. From the above, it will be seen that so far as compulsory insurance against the liabilities arising under the provisions of Workmen's Compensation Act, 1923 (in short the 'Compensation Act') is concerned, under sub-section (3) of Section 95 of the Act, it was left to the discretion of the Provincial Governments to provide for the same. But, subsequently Parliament in order to ensure safeguard to victim employees, as well, by Motor Vehicles (Amendment) Act, 1956, deleted the said sub-section (3) of Section 95 and amended the proviso to sub-section (1) thereof by providing for compulsory insurance to cover the liabilities arising under the Compensation Act. The amended Section 95 of the Act, to the extent it relates to goods vehicle, reads thus.-

'95. Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which.-

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed under Section 108 to transact the business of an insurer; and

(b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required.-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee.-

(a) engaged in driving the vehicle; or

(b) (b).....

(c) if it is a goods vehicle, being carried in the vehicle; or

(ii) xxx'.

18. There has been further amendments to the said Section 95 by Act 56 of 1969 but that is not material for the present purposes.

19. Thus, it is clear from above that, under Section 95(1) of the Act, it is now mandatory for the owner of a goods vehicle to get insured against the risk of death or bodily injury of his employees arising out of and in the course of their employment because of the use of the vehicle in a public place, in respect of the liability arising under the Compensation Act.

Re: Question No. (ii):

20. The above provisions, as amended by 1956 Amendment Act, have been bodily incorporated under Section 147(1) of the Motor Vehicles Act,1988 which had recently fallen for consideration before the Supreme Court in the case of Ved Prakash Garg v Premi Devi and Others, wherein their Lordships after detailed consideration of the provisions of the Motor Vehicles Act and the Compensation Act have held that.-

'Sub-clause (b) of Section 147(1) read with proviso lays down a statutory scheme of compulsory coverage of liability incurred by the employer vis-a-vis his employees when they sustain injuries by the use of motor vehicles during the employment and on account of motor accidents arising out of and in the course of their employment. But the statutory coverage for such liability would be limited to the extent of liability of the insured employer arising under the Workmen's Compensation Act in respect of death or bodily injury to such employees. As the motor accidents resulted in fatal injuries to the employees who were either driving or were being carried in the goods carriage as cleaner whatever liability was incurred by insured owners of the goods vehicle in connection with proceedings arising out of the Compensation Act was covered by the statutory liability of the respondent-insurance companies'.

21. In the above view of the matter, it is no more necessary to delve deep on the issue at hand. Keeping in view the judgment of the Supreme Court which is now the law of the land, it can unhesitant be held that under a compulsory insurance policy wherein the insurer undertakes to indemnify the owner of the vehicle to the extent it is statutorily provided under Section 95 of the Act, he is liable to indemnify the owner only in respect of the liabilities incurred by such owner in connection with proceedings arising out of the Compensation Act.

22. Now, for understanding as to how liability can arise under the Compensation Act, one has to glance through the scheme envisaged under the said Act. The Compensation Act deals with the provisions for payment by certain classes of employers to their workmen as compensation for employment injuries caused by accident. In view of Section 2(n) of the Compensation Act, it cannot be disputed that every person recruited as driver, helper, mechanic, cleaner or in any other capacity with a motor vehicle is a workman for the purpose of the said Act and the list of persons set out in Schedule II is subject to the said definition and not in derogation thereof.

23. Section 3 of the Compensation Act deals with 'Employer's liability for compensation'. Sub-section (1) thereof lays down that 'if personal injury is caused to a workman by accident arising out of and in the course of his employment, his

employer shall be liable to pay compensation in accordance with the provisions of Chapter II'. Section 4 of the Compensation Act deals with 'Amount of Compensation'. It lays down the statutory scheme for computing the compensation payable in cases of the types of accidental injuries suffered by the workmen concerned. The employer, on a conjoint reading of Sections 3(1) and 4(1) of the Compensation Act, would be liable to make good the liability for payingcompensation to the insured workmen under circumstances contemplated by these provisions.

24. Section 19 of the Compensation Act also deserves to be noted atthis stage. Sub-section (1) thereof lays down that.-

'19(1). If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner'.

25. Sub-section (2) of Section 19 bars the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner, or to enforce any liability incurred under this Act. As per the aforesaid provisions any dispute between the employer-insured on the one hand and the Insurance Company, that is said to have insured the employer against such claims for compensation under the Compensation Act, on the other has to be resolved in default of agreement between them, by the Commissioner functioning under the Compensation Act and not by any Civil Court.

26. From the statutory provisions as noticed above and the pronouncements of the Supreme Court on the subject, it is clear that if an employee of the goods vehicle suffers bodily injury arising out or in the course of his employment then the legislature has given him the option to seek compensation either by filing an application before the Claims Tribunal under the provisions of the Act, which has to be determined keeping in view the Common Law principles of tortuous liability as adopted in India or he may claim statutory compensation by resorting to the

proceedings under the Compensation Act. But, Section 110-AA of the Act forbids him to claim compensation under both the Act. No doubt, there are advantages and disadvantages for choosing either of the two forums but that has to be weighed by the claimant to secure the best, keeping in view his own facts and circumstances. By approaching the Claims Tribunal, he may have the advantage of getting higher compensation but for such compensation the Legislature has not provided the protection of recovery by way of compulsory insurance. Whereas, as held by the Supreme Court in the case of Ved Prakash, supra, if the liability of the compensation arises in connection with the proceedings under the Compensation Act, then only the same will be recoverable from the insurer under the scheme of compulsory insurance envisaged under the proviso to Section 95 of the Act. Taking of any other view may amount to causing violence to the statutory scheme. It is for this reason that admittedly, as now held even by the Supreme Court in the Ved Prakash's case, supra, in the compulsory insurance, the insurer can be held liable to discharge the liabilities of the owner of the vehicle arising out of only the proceedings under the Compensation Act. Consequently, if the liability of paying compensation arises in connection with proceeding arising out of the Motor Vehicles Act, then it cannot be said to be covered by statutoryinsurance scheme. It can also be held without hesitation that the Accident Claims Tribunal constituted under Motor Vehicles Act cannot exercise the jurisdiction of determining the amounts payable under the Compensation Act because the Tribunal is of limited jurisdiction and cannot embark upon the powers conferred upon the Commissioner under the Compensation Act. Therefore, no part of the compensation determined by the Tribunal can be held to be covered under the Statutory Insurance.

27. Coming to the facts of the present case, the appellant had thought it more advantageous to get this right of compensation adjudicated by the Claims Tribunal thereby forfeiting his right to claim any statutory compensation provided under the Compensation Act. Therefore, the compensation awarded by the Tribunal is not protected by the umbrella of compulsory insurance. Consequently, if he fails to recover the compensation determined by the Claims Tribunal, then he has done it at his own risk and peril by electing a forum which appeared to him to be more advantageous. Having opted to get the compensation adjudicated by the Tribunal, which is not covered by compulsory insurance scheme under Section 95 of the

Act, he cannot turn around and plead that at least to the extent of liability which can arise under the Compensation Act, the Insurance Company should be held liable to indemnify the owner and thereby should be directed to make good the same to the appellant. At the cost of repetition, I may say that, as held by the Supreme Court, since there was no proceedings for determination of compensation under the Compensation Act, therefore, for the purpose of proviso to clause (b) of sub-section (1) of Section 95 of the Act, no liability at all had arisen under the Compensation Act. The same reasoning follows for sub-section (2)(a) of Section 95 of the Act where expressions used are the same namely. 'arising under the Workmen's Compensation Act, 1923'. The dictum of the Supreme Court in the case of Motor Owners' Insurance Company Limited v Jadavji Keskavji Modi and Others, has to be understood in harmony with its latter judgment in the case of Ved Prakash, supra.

28. Having answered on the question of law on which we are required to deliberate, in my opinion, the appeal should now be placed before the learned Single Judge for final disposal.

Miscellaneous First Appeal No. 1222 of 1992