

K. Manjunath Vs. Basavaiah and ors.

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Court : Karnataka

Decided On : Jan-31-2000

Reported in : 2001ACJ38; AIR2000Kant358

Judge : T.N. Vallinayagam, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 147

Appeal No. : C.R.P. No. 3860 of 1996

Appellant : K. Manjunath

Respondent : Basavaiah and ors.

Advocate for Def. : K. Abhinava Anand, ;N. Subba Shastry and ;S.V. Hegde
Mulkhad, Advs.

Advocate for Pet/Ap. : B.N. Dayanda, Adv.

Disposition : Petition partly allowed

Judgement :

ORDER

T.N. Vallinayagam, J.

1. The second respondent in Motor Accident Claims case, being owner of the vehicle has preferred the above revision questioning the quantum awarded by the

Claims Tribunal and also the dismissal of the case against the insurance company. The fact that an accident took place with reference to lorry bearing No. CTM-9673, though disputed, is found by the Tribunal as true. The evidence of PW 1 is that he was travelling in the vehicle though as gratuitous passenger; the story that he jumped out without looking to the coming vehicle and sustained injuries was disbelieved by the trial Court. The trial Court also released the insurance company from the clutches of compensation on the ground that the policy does not cover extra passenger who travel in the vehicle. It is against that the second respondent has preferred the revision.

2. Heard the respective counsel.

3. Though preliminary objection was taken that, in the light of the dictum of this Court in ILR 1998 Kant 3733 : (1998 AIHC 4642), the Oriental Insurance Co. Ltd. v. Thibbegowda wherein this Court has held that Claims Tribunal is not a Civil Court and ignored the Division Bench ruling in : AIR1985 Kant208 , Mrs. Noreen B. Srikantaiah v. Dashrath Ramaiah Gulbarga. But it was pointed out in the case, reported in ILR 2000 Kant 170, General Manager, KSRTC Central Offices v. Smt. Housamathi Shidramappa Saladagi, another single Judge of this Court has held that Claims Tribunal is a Court subordinate to the High Court. Division Bench decision of Karnataka High Court in Mrs. Noreen R. Srikanthaiah v. Dasharath Ramaiah, Gulbarga, : AIR1985 Kant208 and decision of a single Judge in Panchaxari Shidramappa Yeligar v. Shiggaon Taluk Shikshana Samiti. ILR 1998 Kant 3748 is followed. He did not follow ILR 1998 Kant 3733 : (1998 AIHC 4642). It was further held that when there is a decision of the Division Bench and contrary decision of a single Judge, what is required to be followed by another single Judge in deciding the controversy is a judgment of the Division Bench.

4. I am in entire agreement with the judgment reported in the above decision rendered by my brother Justice B. N. Mallikarjuna and held, following the ruling of Division Bench the revision is maintainable. On the question whether a gratuitous person is covered by the insurance of the vehicle, is answered by the Supreme Court in New India Assurance Company v. Shri Satpal Singh in : AIR 2000 SC235 to the following effect at Page 237-238; of AIR:

'Proviso to Section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile Clause (iii) as the present Clause (ii). In other words, Clause (ii) of the proviso in Section 95(1) of the old Act is totally nonexistent in the proviso to Section 147(1) of the new Act. Under Section 147 of the new Act, the policy must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2). Hence, under Sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The legislature has also taken care even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months a new insurance policy consistent with the new Act is required to be obtained. The result is that under the new Act an Insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.'

5. In the light of the dictum of the Apex Court the liability of the insurance company continues and the dismissal of the case as against the insurance company is not sustainable. As these are the only two points raised in the CRP and argued before me, as much as both points are covered by the decision mentioned above, this CRP is partly allowed. In the result, the claim petition is allowed against all the persons including the insurance company. The order of the trial Court is modified deleting the clause relating to the dismissal of award as against the Insurance company and instead including the clause that, 'It is further ordered that the petition against the third respondent-insurance company is also allowed with costs.'

