

**K. Devadas S/O Krishnappa Vs. United India Insurance Company Limited**  
**Represented by Its Branch Manager and ors.**

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**Court :** Karnataka

**Decided On :** Oct-05-2007

**Reported in :** 2009(4)KCCRSN187:2009(3)AIRKarR452:AIR2009NOC1721

**Judge :** C.R. Kumaraswamy, J.

**Acts :** Motor Vehicles Act - Sections 110 and 173(1); Code of Criminal Procedure (CrPC) - Sections 172

**Appeal No. :** M.F.A. No. 3582 of 2004

**Appellant :** K. Devadas S/O Krishnappa

**Respondent :** United India Insurance Company Limited Represented by Its Branch Manager and ors.

**Advocate for Def. :** A.N. Krishnaswamy, Adv. for R1 and; J.P. Udgata, A/S, Adv. for R2 - 5

**Advocate for Pet/Ap. :** Goutam,; Rajeswar and; Naveen V., Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**C.R. Kumaraswamy, J.**

1. This is a Miscellaneous First Appeal filed Under Section 173(1) of the Motor Vehicles Act paying to set aside the judgment and award dated 06.12.2003 passed in MVC No. 66/1988 by the VII Additional Judge, Member, MACT-3, Court of Small Causes, Bangalore, (SCCH-3) dismissing the claim petition.

2. Parties will be referred with reference to the status in the claims Tribunal.

3. The contention of the claimant in the Tribunal is as under:

The claimants are the Legal Representatives of late Sathyanarayana. When the Sathyanarayana was crossing 80 feet road, 4th Cross 'D' Block, II Stage, Rajajinagar, Bangalore, from West to East at about 7.45 p.m., on 09.03.1985, a Matador Van bearing No. CNZ-4041 belonging to Respondent No. 1 came with terrific speed in a rash and negligent manner and hit the pedestrian D. Sathyanarayana, as a result of which, he succumbed to the injuries.

4. The contention of the Second respondent -United India Insurance Company Limited is as under:

Petition allegations are all denied as false. This respondent's liability if any, is subject to the proof that this respondent was an insurer of the vehicle CNZ 4041 on the date of accident and that they have a liability under the policy and that all the documents like certificate of registration and driving licence are all valid and current on the date of accident The Second respondent stated that the owner of the vehicle had used the vehicle for the purpose other than for which it was permitted to and as such there may be a breach of conditions of the policy. This respondent is given to understand that the petitioner got married and she has suppressed the fact of re-marriage

5. The finding of the Tribunal is as follows:

This Court in Review Petition No. 572 of 2001 has remanded the matter to find out whether there is any Insurance Policy of the respondent through Insurance Company or not. In this regard, the finding of the Tribunal is that the Respondent

No. 1 - Owner of the vehicle has taken a contention that vehicle was scrapped and that statement is blame -worthy on the part of the owner. The claimants and Respondent No. 1 have to establish the fact of existence of Insurance Policy of the Vehicle by producing necessary and reliable documents. But, they have not done so. In this case, Respondent No. 2-Insurance Company, all the times, has contended that there is no existence of the policy. As such. Ex.P3 and Ex.P4 of the concerned period do not reveal the payment of premium. Under these circumstances, it is not safe to infer or rely on the evidence of the petitioners'/appellants' witnesses and case diary papers. Therefore, the Tribunal held that the petition under Section -110 of the Motor Vehicles Act filed by the petitioners against Respondent No. 2-Insurance Company is dismissed. The petitioners are entitled to recover the compensation amount from Respondent No. 1 -Owner.

6. This case has long checkered career. MFA No. 3652/1995 was filed by the claimants against the Judgment and Award dated 15/2/1995 passed in MVC No. 66/88 fixing the liability about the amount of compensation against the 1st respondent - owner of the vehicle. This Court allowed the above appeal in part and the matter is remitted back to the Tribunal with a direction to dispose of the matter as expeditiously as possible. It is left to the appellants/claimants to urge in respect of the enhancement of the compensation, if necessary, in this Court in accordance with law.

7. Again on 8.3.1999 the Tribunal pronounced the Judgment allowing the petition holding that the vehicle involved in the accident was duly insured with the 2nd respondent on the date of the accident and hence the 2nd respondent is liable to indemnify the 1st respondent - owner of the vehicle. Thus it. is ordered that the 2nd respondent shall deposit the amount awarded by the Tribunal as per its Judgment and Award dated 15.2.1995. Thereafter aggrieved by the same, MFA No. 5038/99 was filed before this Court. The appeal was allowed and the matter was remitted back to the Tribunal on 28.2.2001.

8. Again Review Petition No. 572/2001 was filed before this Court to review the order passed by this Court in MFA No. 5038/99 on 28.2.2001. This Review

Petition was disposed of. The Claims Tribunal was directed to dispose of the matter within a period of six months from the date of communication of the order. On 6.12.2003 the Claims Tribunal dismissed the petition as against Respondent No. 2 - Insurance Company and ordered that the petitioners are entitled to recover the award amount from the Respondent No. 1 - owner. Aggrieved by the same, this Miscellaneous First Appeal is filed.

9. Learned Counsel for the appellant-Owner has submitted that the Tribunal has failed to appreciate the particulars mentioned in the case diary which is in the form of secondary evidence. Serial numbers of the policies in the two registers - Ex.R-3 and Ex.R-4 are altogether different. Since the Insurance Company has destroyed the policy dockets, the Insurance Company is liable to pay the compensation in this case. He further submits that the owner of the vehicle in question has sold the same and that has become scrap. Since the purchaser has made the vehicle scrap, appellant should not be blamed. Moreover, at the time of accident, premium amount was paid.

10. Learned Counsel for the respondent-Insurance Company has submitted that the original contract of insurance is to be with the insured. The normal practice of the insurance company is to produce the photostat copy or the original of the insurance policy. The premium Register indicates whether the premium is collected or not. Insured is not required to keep the records more than five years. The policy number mentioned in RTO document or police diary cannot be considered to presumption of contract of insurance.

11. The protection or defence available to the third parties is quite different from the defence or protection available to the owner of the vehicle. The Motor Vehicle Act is beneficial Legislation and the Statutory protection is given only to the third party and not to the owner of the vehicle. In this case, the owner of the vehicle has not filed objection statement before the Tribunal. Learned Counsel for the appellant contends that the Insurance Policy was in existence mainly relying on the particulars mentioned in the case diary. He further contends that he has sold the vehicle and that vehicle has become scrap now.

12. I have carefully perused the records, wherein it is indicated that the Respondent No. 1 is the employee of the Forest Industries Corporation. Therefore, the contention of the learned Counsel for the appellant that the owner of the vehicle is a lay-man and he has sold the vehicle and that vehicle has become scrap and he does not have any policy, has no merit and the same cannot be accepted. The object of recording 'case diaries under Section 172 of Cr. P.C., is to enable Courts to check the method of investigation by the Police. The case diary is for aiding an enquiry or trial. It shall not be used for corroboration or adopting of certain facts transplanted like by conduit pipe. Use should be sparingly but not as a matter or rule on the principle. A case diary cannot assume the character of either substantive evidence or the corroborative evidence.

13. In this case, there is a contract between the owner of the vehicle and the Insurance Company. Whenever, the contract is entered, it creates right and obligation between them. It is the party to the contract only who can enforce right against the other party. But, in case of contract of Insurance, there is an exception that the third party can also take benefit of that contract. When there is privity of contract between the owner of the vehicle and the Insurance Company, the owner withholding the original policy by not producing the same, creates a doubt whether any policy was in existence or not. Normally, the parties have to adduce best evidence to adjudicate the matter. In the instant case, the material evidence is withheld by Respondent No. 1. who is the appellant herein. Therefore, the Court will have no other option except to draw adverse inference.

14. One of the contentions raised by the learned Counsel for the appellant is that the initial burden of proving the fact of existence of the policy is discharged, when the policy number is mentioned. When there is privity of contract between the owner of the vehicle and the insurer, the owner is duty bound to produce the original policy and it is not proper for the owner to rely on the particulars mentioned in the case diary, which is not a substantive piece of evidence. Further, owner of the vehicle must succeed on independent evidence and on the contents of the case diary.

15. Learned Counsel for Respondent No. 1 relies on the decision in the case of Vishram Shriram Pandit v. Balaji Carriers and Ors. 2005 (1) TAC 678 (BOM.), wherein, the Court has observed as under (Paras-4 &5):

After hearing both sides and perusing the entire record it is obvious that the appellant, even after coming to know through the RTO documents that the impugned Insurance Company was named in the RTO Office did not taken any steps such as issue notice to Insurance Company to produce policy etc. to ascertain whether in fact the involved vehicle was insured with the said Company or not. Therefore, in absence of any other evidence to the contrary, the findings recorded by the learned Member of the MACT cannot be said to be illegal and therefore, would brook no interference.

The learned Counsel for the appellant at this stage submitted that the matter could be remanded in order to obtain necessary information from the Insurance Company pertaining to insurance policy. However, in my view this is not a fit case to remand the matter, as it is needless to mention that process of remand cannot be given to fill in the lacuna in view of the settled position of the law in respect of evidential value of entries in the RTO records. There is no other point involved in this appeal and therefore, I have no hesitation to hold that the appeal deserves to be dismissed and therefore, dismissed. In the circumstances there shall be no order of costs.

16. I have carefully perused the finding of the Tribunal The Tribunal has weighed the evidence in proper perspective. The learned Counsel has failed to show any misapplication of law to the facts of the case. Further, the learned Counsel has also failed to show that important piece of evidence has been overlooked, which goes to the root of the case. No ground is made out to interfere with the impugned findings of the Tribunal.

17. In view of the above discussion, this appeal is dismissed.