SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

A. Aravind Vs. A. Arun and Others

A. Aravind Vs. A. Arun and Others

SooperKanoon Citation : sooperkanoon.com/934807

Court : Karnataka

Decided On : May-23-2011

Judge : K.L. Manjunath &Amp; H.S. Kempanna

Appeal No. : Misc. First Appeal No. 151 of 2006 (MV)

Appellant : A. Aravind

Respondent : A. Arun and Others

Advocate for Def. : Mr. G.C. Mittal

Advocate for Pet/Ap. : For Appellant: S.K. Udaya Bhanu, Advocate. For Respondents: R4 - R. Rajagopalan, Advocate, R1 and R2 - Notice dispensed with, R3 – Served.

Judgement :

(Prayer: This MFA is filed under Sec. 173 (1) of MV Act against the judgment and award dated 25.10.2005 passed in MVC No. 2834/99 on the file of Addl. Metropolitan Area, Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

1. Claimant has filed this appeal being not satisfied with the order and award passed by the MACT., Bangalore dated 25.10.2005 IN MVC No.2834/1999.

2. Appellant was the claimant in the aforesaid claim petition. He filed a petition claiming compensation of Rs.32,30,000/- with interest on account of the injuries sustained by him in a road traffic accident. It is the case of the claimant that on 27.4.1999 at about 6-40 a.m. he was proceeding to Bangalore City from Nagarabhavi Extension as a pillion rider on a motor cycle No.KA-02-K-5396 driven by his brother. When the motor cycle reached 5th main road 7th Cross, Chamarajpet near .T.R Mill lorry bearing No.MYH-3041 was coming from the opposite direction in a rash and negligent manner and took sudden right turn without giving any indication and dashed against the motor cycle, as a result of which he and his brother fell down and sustained grievous injuries and he was shifted to Victoria Hospital for treatment. A case was registered by the Chamarajpet Police against the driver of the lorry and he was charge-sheeted for an offence under Sec.379 R/w 338 of IPC. Driver of the lorry pleaded guilty and paid fine before the 5th Addl. CMM, Bangalore. At the first instance, insurance company and the owner were not made as parties. It was filed against one Babu s/o Karim Shariff and Babusab s/o Husan Sab. Later on, an amendment application was filed to implead National Insurance Co. Ltd. and one Manjunath as owner of the lorry. Later, National Insurance Co. Ltd. was deleted and The New India Assurance Co. Ltd was impleaded contending that the vehicle in question was insured from 29.4.1998 to 28.4.1999.

3. Owner of the vehicle Manjunath did not contest the case. Insurance Company contested the case on the ground that the vehicle in question was not insured by it on the date of the accident. It is the specific case of the insurance company that the policy was obtained by the owner of the vehicle on 28.4.1999 after the accident and the policy was valid between 29.4.1999 to 28.4.2000 and that on account of Y2K error in the computer system, in the policy validity period was wrongly typed as 29.4.1998 to 28.4.1999. Therefore insurance company requested the court to dismiss the petition.

4. Based on the above pleadings, following issues were framed by the court below:

1. Whether the petitioners prove that on 27.4.99 at about 6-40 a.m. on 5th main, 7 th cross, near T.R. Mill, Chamarajpet, he met with an accident and sustained grievous injuries was due to rash and negligent act on the part of the driver of lorry bearing No. MYH-3044 as alleged?

2. Whether the petitioner is entitled for compensation? If so, how much and from whom?

3. What order?

In order to prove the respective contentions, on behalf of the claimant, claimant got examined himself as PW-1 and he relied upon the evidence of three doctors who are examined as PWs-2 to 4 and he also relied upon Exs. P-1 to 21. On behalf of the contesting insurance company, one B.R. Ravishankar was examined as RW-1 and one S. Vikramadityan as RW-2 to show that motor cycle was covered by the policy and relief upon Exs.R-1 to 3. The tribunal, considering the evidence let in by the parties, held issue No.1 in the affirmative and awarded compensation of Rs.3,80,000/- with interest at 6% p.a. and exonerated the insurance company from its liability. Being not satisfied with the awarding of Rs.3,80,000/- as compensation and having exonerated the insurance company, present appeal is filed.

5. Though the owner of the vehicle Manjunath is served in this appeal also, he has not chosen to contest the case. In the circumstances, we have heard the counsel for the appellant-claimant and the counsel for the insurance company.

6. The contentions of the appellant's counsel are two-fold. Exonerating the insurance company by the court below is contrary to the plethora of decisions of the Hon'ble Supreme Court. According to him, when Ex. R-3 clearly indicates the validity of the insurance policy as 29.4.1998 to 28.4.1999 when the accident has occurred on 27.4.1999, tribunal ought to have saddled the liability on the insurance company.

7. He further contends that the compensation awarded by the tribunal is inadequate. According to him claimant is a well-known Tennis coach, he was

earning a sum of Rs.8000/- per month, on account of the disability both physically and mentally he has suffered 100% disability and the tribunal did not award compensation on all heads properly. Therefore, he requests the court to enhance the compensation.

8. Learned counsel appearing for the insurance company contends that the tribunal is justified in holding the insurance company is not liable, since insurance company has produced not only the proposal form but also the voucher for having paid the premium by the owner of the vehicle on 28.4.1999 and that RW-1 Ravishankar has categorically stated that on account of the error in the computer a mistake is crept in showing the validity period of the policy in question. Therefore, he contends that considering the proposal from produced as Ex.R-1, payment voucher Ex. R-2 insurance company has explained how the mistake is committed while generating the policy as per Ex. R-3 by the computer and he further contends that so far as the inadequacy of the compensation is concerned, it is for this court to consider the case of the claimant considering the nature of injuries sustained by him, period of treatment taken by him, amount spent by the claimant and the disability caused to him. In other words, he contends that even if the compensation is enhanced, the same has to be satisfied by the owner of the vehicle since insurance company had not issued the policy on the date of the accident. In the circumstances, he requests the court to dismiss the appeal.

9. Having heard the counsel for the parties, following points have to be considered by us in this appeal:

1. Whether the tribunal is justified in exonerating the insurance company from discharging its liability?

2. Whether the compensation awarded by the tribunal is inadequate?

10. So far as point No.1 is concerned, admittedly the owner of the vehicle though served, did not produce the original insurance policy which is in his custody and it is also not the case of the owner that on the date of the accident R-4 herein had issued a policy and the said policy was in force. In the absence of the evidence of the owner of the vehicle, this court has to consider let in by the

respondent/insurance company. Ex. R-1 is a proposal form submitted by the proposer, it is dated 28.4.1999 which is in respect of lorry bearing Reg. No. MYH-3041. Ex. R-2 is the copy of the receipt issued by R-4 insurance company to show that it has collected Rs.3012/- as premium on 28.4.1999 which discloses the policy number and other details. Ex. R-3 is the copy of the policy produced by the insurance company which discloses that the same has been issued on 28.4.1999. It further reads that the validity period as 29.4.1998 to 28.4.1999. learned counsel for the claimant mainly relying upon the validity period mentioned in Ex. R-3 as 29.4.1998 to 28.4.1999 contends that when the accident took place on 27.4.1998 policy was in force and therefore insurance company is liable to satisfy the award. Mr. Rajagopalan appearing for the insurance company contends that considering Ex. R-1 and 2 and also make much of the period mentioned in Ex. R-3 in order to come to the conclusion that policy was in force as on the date of the accident.

11. According to Mr. Rajagopalan when proposal form discloses that it was submitted on 28.4.1999 and premium amount was collected on 28.4.1999 and when policy was issued on 29.4.1999, policy would be prospective one and it cannot be retrospective. According to him, on account of Y2K problem in computer while generating the computer sheet, period has been wrongly mentioned as 29.4.1998 to 28.4.1999. According to him, insurance company cannot issue a policy covering the risk with retrospective effect as the policy would come into force only from the date of issuance of the policy and not for a retrospective period.

12. In order to ascertain the actual facts whether the lorry bearing No. MYH-3041 was insured on the dated of the accident, the register maintained for the years 1998 and also 1999 were produced before the court by the insurance company. On perusal of both the registers, we noticed that on 28.4.1999 the premium was paid by Manjunath in respect of lorry bearing No. MYH-3041. From the above, it is clear that the proposal was submitted on 28.4.99 and the premium is paid on 28.4.1999 and Ex.R-3 policy is issued on 28.4.1999. In addition to that, in the cross-examination of RW-1 it is elicited by the counsel appearing for the appellant as hereunder:

“It is true that on account of Y2K problem in the computer, year 2000 is shown as 0000”.

In addition to that, claimant has produced Ex.P-7 police notice issued to him wherein Col.No.9 discloses that the lorry in question was not insured and that there was no insurance policy. Since vehicle was not insured with the New India Assurance Co. Ltd. and the same party was not arrayed as a party, claimant had impleaded the National Insurance Company as a party at the first instance. Later making use of the mistake crept in Ex. R-3, the said company was impleaded as a party before the tribunal. By looking into the evidence both oral and documentary, we are of the view that tribunal is justified in holding that no policy was in existence as on 27.4.1999 and Ex. R-3 has come into existence only on 29.4.1999 subsequent to the date of the accident.

13. Having given our finding in regard to the date of issuance of the policy as per Ex. R-3 dated 28.4.1999, question would be whether considering the validity period mentioned in Ex. R-3 as 29.4.1998 to 28.4.1999, claimant can contend that the liability has to be saddled on it. To support his view, counsel for the appellant has relied upon the judgment of the Hon’ble Supreme Court in ORIENTAL INSURANCE CO. LTD. Vs. PREMLATA SHUKLA AND OTHERS (2007 ACJ-1928). Para-15 of the said judgment reads as hereunder:

“15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turnround and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In Hukan Singh 1979 PLR 908, the law was correctly laid down by Punjab and Haryana High Court stating:

“(8) Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Pratap had produced only his former deposition and gave no evidence in court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The trial court had discussed the evidence of Ram Pratap in the light of the report, Exh. D1, produced by him. The Additional District Judge

while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial court in letting in a certified copy of the previous deposition of Ram Pratap made in the criminal proceedings and allowing the same to be proved by Ram Pratap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement, the parties in order to save time did not object to the previous deposition being proved by Ram Pratap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same court or in a court of appeal that the evidenced produced was inadmissible. To allow them to do so would indeed be permitting them both to appropriate and reprobate."

Considering para-15 of the judgment in the aforesaid case, we are of the view that said judgment has no application to the facts of this case since appellant himself has not disputed and objected for marking Ex. R-1, the proposal form and Ex. R-2 the premium collecting receipt. When these two documents disclose that the proposal form and policy premium was collected subsequent to the accident, we cannot rely upon the aforesaid judgment. According to us, aforesaid judgment has no application to the facts of this case. He has also relied upon the judgment of the Apex Court in ORIENTAL INSURANCE CO. LTD. Vs. INDERJIT KAUR AND OTHERS (1998 ACJ-123), wherein it is held as under:

"9. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolve of its objections to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

10. . . . . . .

11. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Sec. 64-VB of the Insurance Act. The Public Interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant."

According to us, this judgment has no application to the facts of this case since on the date of accident there was no policy and relying upon a mistake in Y2K computer the claimant cannot make use of the same. It is the specific case of the insurance company that on the date of the accident no premium was collected and no policy was issued. He has also relied upon the judgment of NEW ASIATIC INSURANCE CO. LTD. Vs. PESSUMAL DHANAMAL ASWANI AND OTHER (A.I.R 1964 SC-1736), wherein it is held as under:

"(b) Motor Vehicles Act (1939) Ch. VIII - Object of

Chapter VIII of the Act, it appears from the heading, makes provisions for insurance of the vehicle against third-party risks, that is to say, its provisions ensure that third parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment."

This judgment is also not applicable to the facts of this case since the policy itself was not in existence on the date of the accident. He has also relied upon the judgment of this court in ORIENTAL INSURANCE CO. LTD. Vs. GOWRAMMA AND OTHERS (1993 (3) Kar. L.J.-355) wherein it is held as under:

"Motor Vehicles Act, 1939, Sec. 95(2)(b) - Third party claim - Whether statutory liability of the insurer is limited to Rs.50,000/- - whether any amount over and above the statutory limit is to be paid by the owner of the vehicle? - Insurance policy holder not the real registered owner of vehicle-whether the insurer can escape liability on the ground that the policy was obtained by mis-representation when once the policy had been issued legitimately."

Considering the facts in the aforesaid judgment, it has no application to the facts of this case. He has also relied upon a decision of the Supreme Court in GENERAL ASSURACNE SOCIETY LTD. Vs. CHANDMULL JAIN AND ANOTHER (A. I. R. 1966 SC. - 1644) wherein it is held as under:

"(A) Insurance Act (1938), Preamble - Dead - Construction - Contract of insurance - Ambiguity - in case of ambiguity or doubt contract is to be construed contra preferentem that is against insurance company (Insurance - Contract of insurance - Ambigiuity - Construction)."

Even this judgment has no application to the facts of this case. He has also relied upon several other judgments on the same proposition.

14. We are not disputing the principles decided by the Hon'ble Supreme Court. But the question is whether those principles can be made applicable to the facts and circumstances of this case when policy itself was not issued on the date of the accident. If the policy had been issued on the date of the accident, even if there were to be any mistake in such policy, we could have appreciated the arguments advanced by the counsel for the appellant. When we have come to the conclusion that Ex.R-3 was not in existence on the date of the accident, even if any mistake has crept in on account of Y2k error, claimant cannot make use of the same to contend that the insurance company has to satisfy the award. Accordingly, we hold that the tribunal is justified in holding that the policy was not issued and not in existence on the date of the accident.

15. So far as the second point is concerned, we have seen the evidence of PW-1 to 4. It is an unfortunate case where a promising Tennis coach aged about 27 years has suffered mentally and physically which has been assessed at 85%. If the disability is assessed at 80% to 85% by PW-2 to 4, we are of the opinion that we have to consider the disability at 100%. Tribunal has rightly awarded a sum of Rs.60,000/- under the head injury, pain and suffering. Tribunal has also awarded a sum of Rs.30,000/- as loss of income during the period of treatment. The disability to right fore-arm has been assessed at 50%. But according to us, he has suffered 100% disability which is inclusive of reducing his earning capacity. If the income of the claimant is taken at Rs.5000/- per month as considered by the tribunal and

Rs.60,000/- per annum, loss of income has to be assessed at Rs.30,000/- per annum by applying the multiplier 17, future loss of income has to be assessed at Rs.5,10,000/-. The tribunal has not awarded any compensation under the said head. Therefore, we are of the view that the claimant is entitled for a sum of Rs.5,10,000/- under the head future loss of earning'.

16. In the result, the appeal is allowed in part. Compensation awarded by the tribunal is enhanced by a sum of Rs.5,10,000/- in addition to the compensation already awarded by the tribunal. It shall carry interest at 6% p.a. The enhanced amount of Rs.5,10,000/- with interest shall be satisfied by R-3 Manjunath, owner of the vehicle.

Parties to bear their costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com