
(2015) 11 KAR CK 0091

Karnataka High Court (Dharwad Bench)

Case No: M.F.A. No. 21341/2010 (WC)

The Divisional
Manager, Iffco Tokio
General Insurance Co.
Ltd.

APPELLANT

Vs

Chikkappa and Others

RESPONDENT

Date of Decision: Nov. 6, 2015

Citation: (2015) 11 KAR CK 0091

Hon'ble Judges: L. Narayana Swamy, J.

Bench: Single Bench

Advocate: Ravindra R. Mane, Advocate, for the Appellant

Judgement

L. Narayana Swamy, J.

In this appeal, the appellant - Insurance Company has sought for setting aside the judgment and order dated

21.12.2009 passed by the Labour Officer and Commissioner for Workmen's Compensation, Haveri, in W.C.A. No. 24/2009.

2. The respondents No. 1 to 4 herein had filed a claim petition before the Commissioner for Workmen's Compensation, Haveri, claiming that they

are the dependants of deceased Shiddappa S/o. Chikkappa, who died in an accident involving Piaggio Ape vehicle bearing Reg. No. KA-02/D-

9870, during the course of his employment as a driver under the respondent No. 5 herein. The respondent No. 5 is the owner and appellant is the

insurer of the said vehicle. Respondent No. 1 is the father, respondent No. 2 is the wife and respondents No. 3 and 4 are the sons of deceased

Shiddappa.

3. The contention of appellant before the Commissioner for Workmen's Compensation, was that the deceased could not be a paid driver as he

had no valid driving licence to drive the said vehicle and that as the deceased was driving the said vehicle without possessing a valid and effective

driving licence, there was violation of a material condition of the Insurance Policy, on account of which, the appellant could not have been made

liable to indemnify the respondent No. 5 in respect of the claim. The wife of deceased claimant was examined as P.W.1 by the appellant herein at

length on the point of driving licence. However, she had given evasive reply saying that the driving licence was lost at the time of accident. Then the

appellant had filed an application calling upon the respondent No. 5 herein to produce the driving licence, if any, held by the deceased. Thereupon,

respondent No. 5 had led his oral evidence expressing his inability to produce the driving licence. The Commissioner for Workmen's

Compensation had examined both the parties and awarded compensation of Rs. 3,94,120/-.

4. The learned counsel for appellant submits that the Commissioner for Workmen's Compensation had committed an error in fastening the liability

on the Insurance Company instead of fastening it on the owner of the vehicle in question.

5. As per the contract entered into between the parties, the Insurance Company is liable to pay the insurance amount to the claimants, on

production of a valid driving licence. As the claimants have not produced the driving licence, they cannot claim insurance amount from the

Insurance Company, and it is the owner of the vehicle, who has to satisfy the amount, and the Insurance Company cannot indemnify.

6. The learned counsel for appellant has relied upon the judgments in the case of National Insurance Co. Ltd. Vs. S. Shanthi and Others--> ,

National Insurance Company Ltd. Vs. Meena Aggarwal, and in the case of Yashodhara B. Shetty Vs. United India Insurance Co. Ltd. and

Others, .

7. The learned counsel for respondents has relied on the judgment of Kerala High Court, in the case of *The Oriental Insurance Co. Ltd. Vs. Jimmy*

and *Manoj*, wherein, in para 2 it has been held that-

The employer and employee relationship cannot be disputed by the appellant. The accident also is not disputed. In such circumstances, whether

the workman did have a proper licence or not, whether he is a Wireman, a Boiler Operator or Driver as the case may be, is not a matter for the

concern of the insurer. When the insurer had undertaken the liability that had fallen upon the insured, necessarily the insurer has to discharge that

burden. If there is violation of the policy conditions, the insurer can seek appropriate remedy.

8. The learned counsel for respondents has also relied upon other judgments in the case of *Narcinva V. Kamat and Another Vs. Alfredo Antonio*

Doe Martins and Others, in the case of *Rukmani and Others Vs. New India Assurance Co. and Others*, and in the case of *National Insurance*

Co. Ltd. Vs. Nirabjit Kaur and Others, and submitted that when the relationship is admitted, liability is to be fastened on the Insurance Company

and not on the owner. When a defence is taken by the Insurance Company, it is their duty to prove the same. The mere defence taken by the

appellant that the driver was not in possession of valid driving licence itself is not sufficient and no material evidence is produced to that effect.

9. Heard.

10. The substantial questions of law that arise for consideration of this Court are-

1. Whether the Commissioner for Workmen's Compensation has committed an error in fastening the liability on the Insurance Company?

2. Whether the Commissioner for Workmen's Compensation has committed an error in fastening the liability without examining whether the

deceased was having a valid driving licence or not?

11. A claim petition was filed by the wife, children and father of the deceased before the Commissioner for Workmen's Compensation, Haveri,

claiming that the deceased was working as a driver for the respondent No. 5 owner. The Insurance Company had filed an application, and in

pursuance of the same, the Commissioner for Workmen's Compensation had summoned the owner of the vehicle to produce the driving licence of

deceased. In the chief - examination the owner had admitted his relationship with the deceased and further he had deposed that he was paying Rs.

6,000/- p.m. as salary to the deceased, and at the time of engaging the services of deceased he had verified the driving licence and he had retained

a photo copy of the same with him. He further deposed that now he is not in a position to produce the same. When a specific defence is taken by

the Insurance Company, it is its primary duty to prove that the deceased was not in possession of valid driving licence. Non-possession of any

driving licence could have been proved by examining any of the R.T.O. Officer.

12. If at all it is the case of the owner that he has seen the driving licence of the deceased, it could have been expected that the Insurance Company

could have obtained necessary documents from that particular R.T.O. But, in the instant case, neither the claimants nor the owner of the vehicle

have produced the driving licence of the deceased.

13. It is true that the wife, father and children of the deceased are illiterate persons and they are not in a position to produce copy of the driving

licence. Under these circumstances, it is the duty of the owner, under the provisions of the Motor Vehicles Act, to produce the licence. But, he has

failed to produce the same. This Court had adjourned the matter two times, at the request of learned counsel for the respondent - owner to

produce the licence, but the same has not been produced. This goes to show that the deceased was not having any valid driving licence. As per the

provisions of the M.V. Act, it is mandatory for every person who ply their vehicle on the public road to possess a valid driving licence. The owner

of the vehicle should keep the driving licence of his driver with himself before allowing him to drive his vehicle on the road.

14. As per JIMMY's case, the employer and employee relationship cannot be disputed the appellant - Insurance Company and the accident also

cannot be disputed. In such circumstances, whether the workman did have a proper licence or not, whether he is a Wireman, a Boiler Operator or

Driver as the case may be, is not a matter for the concern of the insurer. When the insurer had undertaken the liability that had fallen upon the

insured, necessarily the insurer has to discharge that burden and if there is any violation of the policy conditions, the insurer can seek appropriate

remedy. The observations relied upon by the learned counsel for respondents cannot be accepted and same is rejected. The judgments relied upon

by the learned counsel for respondents are not applicable to the present case on hand, in any angle.

15. In MEENA AGGARWAL's case it has been held that, the owner of a vehicle cannot contend that he has no liability to verify the fact as to

whether the driver of the vehicle possessed a valid licence or not.

16. In SMT. SHANTHI's case, it has been held that, the claimant while driving auto rickshaw which met with an accident did not possess valid

driving licence and the licence which he possessed was for driving the non-transport vehicle, but he was driving the transport vehicle. Hence, the

liability was fastened on the owner and not on the Insurance Company.

17. In the light of the above discussions, basically for the act of an employee or workman, the owner is liable to pay compensation and damages,

but the indemnity could be done if a policy is issued under the Workman Policy. On going through the records, it is found that the policy produced

is not a workman policy. Hence, the judgment and order passed by the Commissioner for Workmen's Compensation, is set aside. The liability is

fastened on the owner of the vehicle in question and not on the Insurance Company.

18. The amount in deposit, if any, is directed to be refunded to the appellant - Insurance Company, forthwith.