

(2016) 06 KAR CK 0055
In the Karnataka High Court
Case No : MFA No. 9007 of 2011 (MV)

Bajaj Allianz General Insurance Company Ltd.

APPELLANT

Vs

Prashanth

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Citation : (2016) AAC 1754 : (2017) ACJ 741

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : H.S. Lingaraj, Advocate, for the Appellant; Basavaraju, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—The appellant/insurance company has filed this appeal being aggrieved by the judgment and award dated 25-6-2011 made in MVC No. 891/2009 passed by the District Judge, Additional Motor Accident Claim Tribunal-II, I Fast Track Court, Shimoga (hereinafter referred to as 'the Tribunal' for short) fastening the liability on them to compensate the claimant.

2. The first respondent herein filed the claim petition contending that on 8-4-2009 at about 5.30 p.m., while he was travelling in a tractor and trailer bearing Registration No. KA-14/TA-1543-44 belonging to the 3rd respondent herein on Tank Bund of Basavanagangoor village, the driver of the Tractor and Trailer drove the vehicle in a rash and negligent manner. As a result of which, the Tractor and Trailer turned turtle. In view of that, the claimant fell down and sustained grievous injuries. He filed a claim petition contending that due to the rash and negligent driving of the Tractor and Trailer, the accident has occurred. Hence, sought for compensation of Rs. 5,20,000/-.

3. Though the owner as well as the driver of the Tractor and Trailer were served and entered appearance and that they have filed statement of objections, they have not participated in the trial. The third respondent/insurance company filed

written statement denying the entire averments made in the claim petition and contended that the claimant was an unauthorized passenger sitting in the tractor and the insurance policy does not cover the risk of the passenger travelling in the tractor. In violation of the conditions of the policy, the Tractor and Trailer is being used for commercial purposes. Hence, sought for dismissal of the claim petition as against the insurance company.

4. On the basis of pleadings of the parties, the Tribunal framed the necessary issues. The claimant in order to prove his case got examined himself as P.W. 1 and got marked the documents as Ex. P.1 to Ex. P 110. The doctor who treated the claimant and issued disability certificate was examined as P.W. 2. On behalf of the 3rd respondent/insurance company, one of the officers was examined as R.W. 1 and the insurance policy of the Tractor and Trailer was marked as Ex. R1.

5. The Tribunal after appreciating the oral and documentary evidence and taking into consideration the spot panchanama, IMV report, copy of the complaint and FIR held that the accident occurred due to the rash and negligent driving of Tractor and Trailer by the driver and the claimant has sustained injuries. Taking into consideration the injuries sustained and suffering undergone by the claimant, the Tribunal has awarded compensation of Rs. 2,65,991/- with interest at the rate of 6% p.a. Since the insurance policy covers the risk of the Tractor and Trailer, the liability was fastened on the insurance company to compensate the claimant. Being aggrieved by fastening the liability on the insurance company, they have filed this appeal.

6. Sri H.S. Lingaraju, learned counsel appearing for the appellant contended that fastening liability on them to compensate the claimant is contrary to law. The records clearly disclose that the claimant was travelling on the tractor. The seating capacity of the tractor is only one. So it is very clear that the claimant was sitting either on the mud-guard or on the engine of the tractor. The insurance policy does not cover the risk of the person travelling in the tractor sitting either on the mud-guard or on the engine. Further, the complaint lodged by one Shivamurthy, who is the uncle of the claimant clearly shows that the claimant was sitting on the engine. As per Rule 28 of the Road Rules, no person can be allowed to sit either on the mud guard or on the engine of the tractor. Hence, fastening the liability on the insurance company to compensate the claimant is contrary to law and sought for setting aside judgment and award passed by the Tribunal. In support of his contention, learned counsel relied upon a Division Bench judgment, reported in 2012 (1) AIR Kar R 77 in the case of Oriental Insurance Co. Ltd., Bangalore v. Smt. Shoba and others and also an unreported judgment in MFA No. 5574/2011 disposed of on 14-1-2016.

7. Though the driver as well as the owner of the Tractor and Trailer were served with notice, they remained unrepresented.

8. Mr. Basavaraj, learned counsel appearing for the first respondent/claimant argued in support of the judgment and award passed by the Tribunal and

contended that the claimant was travelling in the trailer. The Tractor and trailer put together becomes the goods vehicle. The person travelling in the tractor is statutorily covered under Section 147 of the Motor Vehicles Act. Hence, sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties and other relevant records.

10. The records clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 8-4-2009. The specific case pleaded by the claimant is that while he was travelling in the Tractor and Trailer, due to the rash and negligent driving of the driver of the Tractor and Trailer, the vehicle turned turtle, as a result of which, he sustained injuries. However, the complaint lodged by one Shivamurthy who is the uncle of the claimant clearly discloses that the claimant was travelling on the tractor. Apart from that, the claimant himself has admitted in his cross-examination that he was sitting next to the driver of the Tractor and Trailer. The seating capacity of the tractor is only one and no person can sit next to the driver. Hence, the admission made by the claimant clearly goes to show that he was travelling on the tractor and there is no document produced to prove that he was travelling in the trailer. The Division Bench of this Court in a judgment reported in 2012 (1) AIR Kar R 77 (supra) has clearly held that the person travelling in the tractor sitting on the mudguard is not covered by the insurance policy. Paragraphs 10 and 11 of the said judgment read as under:

10. We have perused the policy issued by the appellant. The appellant-Company has collected a sum of Rs. 25/- under the head, legal liability towards the employee/driver. Admittedly, it is a Tractor. The policy is in respect of an engine of a Tractor which has got only one seating capacity which is provided for driving the Tractor. In other words, when seating capacity of the Tractor engine is only one and the liability is in respect of the driver, we are of the opinion driver was not justified in fixing the liability on the Insurance Company.

11. In the circumstances, we are of the view that the appeal has to be allowed by holding that the policy issued by the appellant does not cover the risk of an employee who was sitting on the engine of the Tractor and risk covers only the driver.

11. In view of the aforesaid judgment of the division bench, order passed by the Tribunal fastening the liability on the insurance company to compensate the claimant cannot be sustained and the same is liable to be set aside. However, it is open to the claimant to enforce his claim against the owner of the offending Tractor and Trailer. Accordingly, I pass the following :

Order

1. The appeal is allowed in part. The judgment and award dated 25-6-2011 made in MVC No. 891/2011 passed by the Additional Motor Accident Claims Tribunal,

Shimoga is modified. The insurance company is exonerated from its liability to compensate the claimant. However, it is open for the claimant to enforce his claim against the owner of the Tractor and Trailer.

2. The amount in deposit is directed to be refunded to the appellant-insurance company.