

(1998) 08 KAR CK 0054

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1202 of 1998 connected with
Miscellaneous First Appeal No. 1244 of 1988

B.K. Devapaiah

APPELLANT

Vs

Mahabala Shetty And Others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 2 (34)

Citation : (2000) ACJ 1346 : (1999) ILR (Kar) 1009 : (1999) 2 KarLJ 215

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri K.M. Chandra Prasad, for the Appellant; Sri H.G. Ramesh, Sri D. Leela Krishna and Sri T.S. Srinivasmurthy, for the Respondent

Judgement

1. Heard both sides.
2. These two appeals are filed by the owner of the offending vehicle i.e., Tractor-cum-Trailer bearing Registration Nos. MVC 3704 and 3705 against the respective awards of Motor Accidents Claims Tribunal, both dated 5-1-1988, passed under its common judgment in MVC Nos. 42 to 67 of 1985, 7 of 1985 and 8 of 1985 granting compensation to the claimants therein fixing the entire liability on the appellant alone and absolving respondent 3-insurer of the vehicle of liability to pay the same to claimants.
3. In MVC No. 7 of 1985 giving rise to MFA No. 1202 of 1988, the total compensation of Rs. 18,000/- has been granted to the claimant, who is respondent 1, under the impugned award together with 9% interest p.a. In MVC No. 8 of 1985 which has given rise to MFA No. 1244 of 1988 an amount of Rs. 22,100/- with interest at 9% per annum has been awarded under the impugned award to respondent 1 therein.
4. Admittedly, the said Tractor-cum-Trailer of the appellant was duly insured by respondent 3-insurer under its current policy which was an Act policy. It is also

an undisputed fact that the compensation amounts in these two cases were awarded by the Tribunal to respective respondent 1 on account of the death of their minor daughter named Jaya aged about 9 years in the first case, and for the death of claimant's wife Gulabi aged about 35 years in the next case. They were the workers employed by appellant as labourers in his coffee plantation. On the date of accident i.e., 17-11-1984 when the said two deceased victims together with other labourers of the appellant were being transported in the Tractor-cum-Trailer to the appellant's coffee plantation for their daily coolie work there, the said vehicle met with accident on account of its negligent driving. As a result both the deceased succumbed to the injuries sustained in the accident.

5. The liability to pay compensation to claimants awarded by the Tribunal is fastened on the owner and driver of the vehicle alone under the respective awards absolving insurer-respondent 3 of its liability on the ground that the place where the accident occurred was not a public place within the meaning of its definition contained in Section 2(34) of the Motor Vehicles Act, 1988 ("the Act" for short) and that the third party risk under the said policy was not covered for want of payment of extra premium.

6. It transpires from the evidence on record that the accident occurred when the said Tractor-cum-Trailer was proceeding along the access road branching off and leading from the main road towards the said coffee plantation, which is shown as situated in Sy. No. 75 belonging to appellant. The definition of public place contained in Section 2(34) reads:

"public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage".

This provision indicates that any place, whether a thoroughfare or not, to which the public have a right to access is also a public place. It is an undisputed fact that the said access road on which the Tractor-cum-Trailer was proceeding when it met with an accident was a road leading to the coffee estate and for the purpose of attending to its agricultural operations the labourers employed by the appellant, who were members of the public, had to make use of the said access road and, therefore, it was the public place. In that view of the matter, the Tribunal has clearly erred in holding that the place of accident was being not a public place within the meaning of Section 2(34), the insurer cannot be saddled with the liability to pay the compensation to claimants under its Act policy.

7. In a Division Bench decision of this Court in Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, , it is held:

"The liability is limited to six employees and the extent of liability is limited to the amount of compensation payable under the provisions of the Workmen's Compensation Act, unless in a given case, the owner concerned has taken extra coverage by paying an extra amount of premium".

8. In the case on hand the compensation payable to the claimants in these two cases has been rightly determined by the Tribunal as per the provisions of Workmen's Compensation Act. Therefore, respondent 3 cannot escape its liability from making payment of the respective compensation amount to the claimants. However, as submitted by Mr. H.G. Ramesh, rate of interest awardable under the Workmen's Compensation Act on the compensation amount being 6% in these cases interest at 9% awarded by the Tribunal has to be reduced to 6% p.a.

9. For the reasons aforesaid, both the appeals are allowed, respondent 3 is held also liable jointly and severally along with appellant-owner of the vehicle and respondent 2 (Driver) to pay the compensation to the respective claimants under the impugned awards, both dated 5-1-1988; with interest thereon at 6% per annum as far as respondent 3's liability is concerned, and the balance of interest amount payable under the said awards shall be paid by the appellant. The awards under appeals shall stand modified accordingly.