
(2011) 08 KAR CK 0104
In the Karnataka High Court
Case No : MFA No. 9869 of 2008 (WC) C/W

Branch Manager National Insurance Co. Ltd.

APPELLANT

Vs

Smt. K.T. Savitha and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Appendix II pertaining to the Rules of the Road Regulations, 1989 — Regulation 28

Citation : (2011) 08 KAR CK 0104

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, in MFA No. 9869/2008 WC C/W and MFA 9870/2008, for the Appellant; Bhushani Kumar for R1 to R3 and R5 in MFA No. 9869/2008 (WC) C/W and R1 in MFA 9870/2008, R2 and R3 minors and rept. by R1 and Sri Manmohan for R6 in MFA No. 9869/2008 (WC) C/W and Sri D. Manmohan for R3 in MFA 9870/2008, for the Respondent

Final Decision : Allowed

Judgement

The Hon''ble Mr. Justice A.N. Venugopala Gowda

1. Appellant had issued an insurance policy for tractor-trailer bearing registration Nos. KA 11 T 2779 and KA 11 T 3134. The policy was valid from 27.12.2006 to 26.12.2007. The said vehicles were owned by Smt. Doddamma, W/o. Basavegowda @ Thammegowda, Two claim petitions were lodged before the Commissioner for Workmen's Compensation ("CWC" for short), Sub-Division-II, Mandya, under the provisions of Workmen's Compensation Act, 1923, contending that, Kalegowda and B.H. Nagaraju, were proceeding in the said vehicles as loaders and unlades on 30.12.2006 and on account of rash and negligent driving of the vehicles by its driver, the tractor-trailer unit turned turtle, an accident occurred resulting Kalegowda and B.H. Nagaraju sustaining fatal injuries and death. The insured admitted the jural relationship of employer and workmen between herself and the deceased as well as the fact of paying wages at the rate of Rs. 3,000/- per month and also the occurrence of the accident.

However, it was stated that, the vehicles having been insured by the Appellant, the liability to pay compensation should be fastened on the Appellant. However, the Appellant filed written statements and opposed the claim petitions.

2. The wife of deceased kalegowda, the 1st claimant in WCA/FC/CR-32/2007 deposed as P.W.-1, through whom Exs. P-1 to P-3 were marked. A witness was examined as P.W. 2. Smt. K.T. Savitha, wife of deceased B.H. Nagaraju, the 1st claimant in WCA/FC/CR-33/2007 deposed as P.W. 1, through whom Exs. P-1 to P-11 were marked and another witness was examined as P.W. 2. The CWC allowed the claim petitions and has directed the Appellant to deposit the determined compensation amount. Feeling aggrieved, the insurance company has preferred these appeals.

3. Sri. A.N. Krishna Swamy, Learned Counsel appearing for the Appellants, contended that, the police documents which have been marked in evidence before the CWC would indicate that the driver of the tractor carried the deceased persons on either side of the mudguard at the relevant point of time and carrying of any person on the mudguard of the tractor being prohibited, there being breach of policy conditions, the fastening of liability on the Appellant to deposit the determined compensation amount by the CWC is illegal. Learned Counsel submitted that, the police records have neither been perused nor appreciated by the CWC. Learned Counsel submitted that, the material evidence has been omitted from consideration and the findings recorded against the Appellant, are perverse.

4. Smt. Bhushani Kumar, Learned Counsel appearing for the legal representatives of the deceased workmen/claimants, contended that, the owner of the vehicles had employed the deceased Kalegowda and B.H. Nagaraju as loaders and unloaders of the vehicle which met with an accident on 30.12.2006, on account of rash and negligent driving by the driver of vehicles and the said persons sustained fatal injuries by an accident arising out of and during the course of employment and hence the insurer being liable, the fastening of liability on the Appellant which had issued the insurance policy is justified.

5. Sri. D. Manmohan Learned Counsel appearing for the employer/owner of the vehicles, by relying upon a decision in the case of New India Assurance Company, Bangalore v. Jayashree @ Laxmi and Ors. AIR 2009 Kar 193, contended that, the fastening of liability on the Appellant to deposit the compensation amount is justified. Learned Counsel contended that, if the driver of the vehicles carried the workmen on the mudguard, the same would only invite penal action by the police or the law enforcing authorities and none of the terms and conditions in the policy having indicated that insurer would not cover the risk of such persons, the fastening of liability on the Appellant cannot be held to be illegal.

6. I have perused the record. The substantial question of law for consideration is: Whether the CWC is justified in fastening the liability on the Appellant to pay the

determined compensation amount?

7. To prove the accident, the claimants have produced the police records, such as FIR, statement of witnesses, spot mahazar, P.M. Report, inquest report and charge sheet. The documents were admitted in evidence and marked as exhibits, The said documents would show that the deceased persons, who were sitting on the mudguard of the tractor, fell down, sustained fatal injuries and succumbed. The documents having been brought on record and admitted in evidence, the party bringing the same on record cannot turn around and plead anything contrary. The fact that the deceased persons were sitting on the mudguard, fell down, sustained fatal injuries and succumbed, has been established. The CWC without noticing the contents of the exhibited documents, more particularly the police records, has passed the impugned orders/awards.

8. Regulation 28 in Appendix II pertaining to the Rules of the Road Regulations, 1989, formulated under Motor Vehicles Act, declares that the driver when driving a tractor shall not carry or allow any person to be carried on the mudguard of the tractor, thus, travelling of any in a tractor apart from the driver is illegal. The policy of insurance does not cover the risk of any inmate of a tractor. The permitted seating capacity of a tractor is only that of a driver.

9. The CWC without noticing the contents of the exhibited documents/police records and the policy conditions in Ex. R1, has mechanically fastened the liability to pay the determined compensation amount by the Appellant. On account of breach of policy conditions by the driver of the insured i.e., in allowing the deceased persons to sit on the mudguard of the tractor, there being violation of Regulation 28 in Appendix II pertaining to the Rules of the Road Regulations, 1989, the fastening of liability on the Appellant to pay the compensation to the legal representatives of deceased Kalegowda and B.H. Nagaraju, cannot be upheld. The orders and awards passed by the CWC against the Appellant, being illegal, has to be set aside.

10. In the case of New India Assurance Company, Bangalore v. Jayashree Alias Laxmi and Ors. AIR 2009 KAR 193, one Jagannath traveled by sitting on the roof of the bus i.e., on 5.2.1997, fell down and sustained fatal injuries and died. In the claim petition filed, for the Insurance Company, it was contended that, there being no seating provided for traveling on the roof top and the deceased having fallen from the roof top, it has no liability to pay the compensation. The contention when reiterated in the appeal was negative by holding that, none of the terms and conditions of the policy would indicate that, the insurance would not cover the risk of such persons. The said decision has no application to the case on hand in view of the facts, circumstances, record of the case noticed supra.

In the result, the appeals are allowed and the impugned orders/awards to the extent of fastening the liability on the Appellant to pay/deposit the determined compensation amounts is set aside.

The claim petitions filed as against the Appellant being untenable shall stand dismissed i.e., insofar as the Appellant is concerned.

However the parties are directed to bear their respective costs.

The amount in deposit be refunded to the Appellant.