

**(1998) 03 KAR CK 0031**

**In the Karnataka High Court**

**Case No : Miscellaneous First Appeal No. 418 of 1992**

D. Lakshmana Murthy and Another

APPELLANT

Vs

V. Rajesh By Guardian and Another

RESPONDENT

**Date of Decision : 31-03-1998**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 2 (18), 2 (30), 2 (32), 94, 96

**Citation :** (1999) 1 ACC 311 : (2001) ACJ 18 : (1998) 6 KarLJ 290

**Hon'ble Judges :** Hari Nath Tilhari, J

**Bench :** Single Bench

**Advocate :** Sri Sadakshriah, Sri M.R. Achark, for the Appellant; Sri K.R. Venkatesh Gowda and Sri H.G. Ramesh, for the Respondent

## **Judgement**

1. This appeal arises from the judgment and award dated 3-10-1991 delivered by the Motor Accidents Claims Tribunal, Bangalore City, awarding Rs. 25,500/- as compensation together with costs and interest at the rate of 6% p.a. from the date of petition till the date of payment within three months. It further ordered that out of the award amount, a sum of Rs. 2,500/- with full interest and costs should be paid to next friend of the petitioner to meet the medical and other expenses and the balance of the amount awarded shall be deposited in Fixed Deposit in the name of the petitioner-respondent 1 in some nationalised Bank during the minority of the petitioner and the next friend of the petitioner being the natural guardian is entitled to withdraw the interest accruing on said deposit. The Tribunal made the appellants i.e., the owner and driver of the vehicle to be liable to pay the amount of compensation. The owner and driver having felt aggrieved from the award, have come up before this Court.

2. The Tribunal, no doubt, had made a casual observation that there is no clear, convincing and cogent evidence placed on record to show that the trailer was also plying at the relevant time and was also involved in the accident and as the tractor was not covered by the policy of insurance, the 4th respondent ingeniously pleaded that the trailer was also involved in the accident only with a

view to saddle the Insurance Company with the liability and to help the petitioner. In the written statement the owner of the vehicle had averred that at the time and on the date of the accident and occurrence the trailer was attached with the tractor. Looking to the Tribunal's observations it appeared to me that Tribunal ought to have framed the issue, whether at the time of accident trailer was also being plied along with the tractor and a finding on this issue should be recorded after giving the parties an opportunity for leading evidence on the point as to whether the trailer was also attached with the tractor or tractor was attached with the trailer in question and both were plying as goods vehicle and if so, Court could have considered Other questions. With this additional issue which had to be tried, it was remanded" back to the Tribunal. But, I feel sorry to mention that the Tribunal inspite of an additional issue being remanded to it, failed to record any specific finding on the issue. It had to decide and record a specific finding on the question whether trailer was also attached to the tractor as goods vehicle. It could have recorded the finding in negative if there was no evidence. But the Tribunal did not record any specific finding. It only recorded a finding that the accident was caused by tractor and then proceeds to observe that tractor and trailer were attached to each other, but both should have been insured to make the Insurance Company liable. The legal question is a different question. But the Tribunal has not recorded any finding on the issue for the determination of which the case was remanded back. I am unable to understand why the Member of the Tribunal failed to understand the purport of additional issue No. 1 which was framed and sent to it? Anyway, the additional issue No. 1 which had been remanded had been sent for recording a finding after parties were allowed to lead evidence on the plea taken by them. But the owner of the vehicle did not think it fit to utilise that opportunity to lead necessary and proper evidence on that point. The Tribunal in its order has already observed that there is no clear or cogent evidence placed on record to show that trailer was also plying at the relevant time and so also involved in the accident. Since after that finding recorded by the Tribunal in its original order dated 3-10-1991, the position has not improved. The finding is that accident had been caused by the tractor and the tractor had not been insured. Neither the claimants nor the owner of the vehicle has led any evidence to show that the trailer was attached to the tractor and tractor was being plied on the road. If the appellant did not wish to utilise the opportunity and he was unable to place any evidence, it is his own fault. It has to be taken that there is no evidence additional to what lead at original stage i.e., before remand P.W. 1 - the claimant or the injured is silent on this aspect of the matter. He states that at the time of the accident, a tractor came from hind side with great speed and dashed against his cycle. I lost consciousness on account of the injuries. When the injured suffered injuries at the time of the accident when he lost consciousness, he only took note that tractor hit him. Beyond that he could not note. The other witnesses who have been examined on behalf of the respondent before the Claims Tribunal is R.W. 1- Narayana Swamy. He has deposed that when tractor and trailer in question were proceeding near Siddalingaiah Circle, a cyclist suddenly came and dashed against

the trailer. The cyclist had sustained injuries. He was cross-examined by the learned Counsel. He says,

"When I had seen the cyclist for the first time earlier to the accident, he was coming at a distance of about 10 feet".

He denies the question of rashness. He says,

"It is not correct to say that due to rash and negligent driving of the vehicle in question, the accident had taken place and the petitioner sustained injuries".

The deposition of R.W. 1, no doubt, reveals that at the time of occurrence, tractor and trailer in question were attached and proceeding near Siddalingaiah Circle. It is another question whether tractor caused injuries or trailer caused injuries. That is a different matter. In the course of cross-examination by respondent 4, the injured-P.W. 1 no doubt has pointed out that trailer in question dashed against me and I sustained injuries. But in the course of examination-in-chief he has made a statement that a tractor came from hind side and dashed against him. No doubt, it could be argued that these statements may not be of much value, but, coupled with the statement of R.W. 1, no doubt, this may show that trailer was being driven along with the tractor. No question has been put in the course of cross-examination either to P.W. 1 or R.W. 1 challenging the testimony or facts which may create doubts about the testimony. At this stage, learned Counsel for the Insurance Company, Sri H.G. Ramesh submitted that neither R.W. 1 or P.W. 1 have given the number of the tractor or trailer. Learned Counsel appearing for the Insurance Company could have put that question in cross-examination. The Insurance Company should have taken a specific case in the written statement that there was no trailer attached to the tractor. Even when clear issue was framed and sent back to the Tribunal, the Insurance Company did not lead any evidence. Nothing has been done on behalf of the Insurance Company nor any further evidence has been led by the appellant. I have to decide this question on the findings on record taking a view that the parties did not wish to lead any evidence. As considered earlier, I did not find any good reason to disbelieve the evidence of R.W. 1 which finds support from the evidence of P.W. 1 which says that trailer was also there, because the Tribunal has recorded a finding that the injury was caused because of the accident caused by the negligent driving of the tractor. No doubt, no trailer can move without being attached to a tractor. Tractor is being driven and along with it the trailer attached to it. When a tractor is attached along with the trailer, no doubt, it becomes a goods vehicle. A trailer cannot be driven without a tractor. Now the question to be considered is whether in such cases when a trolley (trailer) had been insured with full knowledge that trolley/trailer could not be driven without a tractor, whether the Insurance Company should be held to be liable for payment of compensation when accident had taken place and the claimant was injured, might be because of the tractor. The Tribunal in its original order has not applied its mind on this aspect of the matter, but when the matter was sent back, the Tribunal opined that if the tractor and trolley are moving together attached to

each other, they become the goods vehicle. Even if I take the finding recorded by the Court below that accident was caused because of the tractor hitting the boy, but as the fact found by this Court as per the evidence that at the time of occurrence, the trailer was being driven by the tractor and the trailer was attached to the tractor, no doubt, tractor was not insured, but the trailer was insured. Hence, the question before this Court for determination in such circumstances is, whether the Insurance Company will be liable to pay compensation in such circumstances.

3. On behalf of the Insurance Company, Sri H.G. Ramesh, learned Counsel placed reliance on a Single Judge's decision of this Court in the case of *The Oriental Insurance Co. Ltd. Vs. N. Chandrashekar and Others*, , to press his contention that as the tractor was not insured, though trailer was insured, the Insurance Company will not be liable for paying compensation as the accident and the injury was caused because of tractor which was not insured. Before I proceed to consider his case, I think it appropriate to make a reference to certain provisions of the Act. The expression "Motor Vehicle" has been defined u/s 2(18) of the Motor Vehicles Act, 1939 as under:-

"2(18) "Motor Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises".

The definition of "motor vehicle" per se shows that a trailer is also included within the definition of "motor vehicle". Section 2(30) defines the tractor as under:-

"2(30) "Tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion, but excludes a road-roller)".

This definition per se reveals that a tractor by itself is taken to be a motor vehicle, but it has very clearly been indicated by the Legislature that a tractor is not intended by itself to carry any load. Trailer has been defined in Section 2(32) as under:-

"2(32) "Trailer" means any vehicle other than a sidecar drawn or intended to be drawn by a motor vehicle".

This definition of the "trailer" very clearly reveals that a vehicle which is drawn or intended to be drawn by a motor vehicle is known as trailer. This definition per se reveals by necessary implication it has to be taken to be a vehicle to be drawn and is intended to be drawn by another vehicle(motor vehicle). So as it is intended to be drawn by another motor vehicle, it has been included within the definition of "motor vehicle". No motor vehicle can be made use of on the road

unless it has been insured. The purpose of emphasising about the insurance before a motor vehicle is drawn on the road is not to confer any benefit to the owner of the motor vehicle nor it is intended for the purpose of profit earning or for enabling the Insurance Company to make any profits or to enhance its business, but the purpose of laying emphasis on a motor vehicle being insured before it is moved on the road is for the benefit of the persons namely the persons who may be injured in accidents caused by the use of motor vehicle or it may be said for the benefit of the legal heirs of the deceased persons who die in motor accident, so that they may not be subjected to long sufferings in getting compensation. When I so observe, I find support from the decision of their Lordships of the Supreme Court in the case of *Skandia Insurance Company Limited v Kokilaben Chandravadan and Others*, (Para 13) when the Supreme Court has observed as under:-

"13. In order to derive the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94. Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Courts would be recoverable from the persons held liable for the consequences of the accident. A Court can only pass an order or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law Courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might

provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance Company to satisfy the judgment obtained against the persons insured against third party risks (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependents of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective".

Keeping this in view, the provisions have to be interpreted. When the trailer is insured by the Insurance Company, it insures with full and complete knowledge that a trailer should be drawn by use of another motor vehicle. When this is so, when trailer is drawn by use of a tractor, it becomes goods vehicle, but it comes within the category of motor vehicle. When it is insured as motor vehicle, in that case in my opinion, if the trailer is insured and the Insurance Company had insured the vehicle with full knowledge that it is to be drawn or intended to be drawn by use of another motor vehicle, then it is to be deemed that the Company has taken the liability to discharge and to pay the compensation for injury caused by the use of the trailer which cannot be used without the use of a motor vehicle. So if the accident is caused by a tractor or by trailer itself, the Insurance Company's liability will be there irrespective of the fact that tractor was not insured. The case of Oriental Insurance Company Limited, *supra*, is distinguishable on its own fact. In that case, though tractor and trailer were moving on the road and the accident was caused by the trailer, but in that case, trailer was not insured one, instead tractor was insured by the Insurance Company. The Insurance Company insured the tractor and as the tractor which, no doubt, is a motor vehicle in itself, but it is by itself not constructed to carry any load. Therefore, in such a case, it may well be said that when a tractor was insured, it was insured as a tractor only with no knowledge that it has to be used with a trailer. In the case of Oriental Insurance Company Limited, *supra*, the tractor was insured, but the trailer was not insured. So in that case, the law that has been laid down that tractors are not intended to be used for the purpose of loading or for any other purpose. But so far as trailer is concerned, it very clearly reveals that it cannot be used without being used along with other motor vehicle such as tractor. So this makes a greater difference. Tractor is insured only as a

tractor. But trailer is insured with full knowledge that some other motor vehicle is also to be used along with the trailer. Hence, the liability of the Insurance Company has arisen.

4. Thus considered in my opinion, the case of Oriental Insurance Company Limited, *supra*, is not applicable and of no assistance for the purpose of this case and is distinguishable.

Thus considered in my opinion, the appeal is to be allowed. The compensation and the award is to be modified to this extent that the amount under the award is payable by the owner of the vehicle and its driver is to be paid by the Insurance Company i.e., the Insurance Company is liable to pay all the amounts due. The appeal is allowed. The costs of the appeal are made easy. It is open to the claimants to realise it even from the Insurance Company itself if the amount is not deposited by either of the parties including the Insurance Company. It is open to the claimants to proceed with the realisation of the amount along with interest up-to-date from Insurance Company.