

(2005) 08 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3633 of 2001

G. Murgan and Another

APPELLANT

Vs

Maheshwaran and Another

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (5), 149 (1), 149 (2), 149 (4), 167

Citation : (2005) 6 KarLJ 122 : (2005) 4 KCCR 243 SN

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.P. Shankar, for Ravi G. Sabhahit, for the Appellant; Krislina Murthy D., for Respondent-1 and A.N. Krishnaswamy, for Respondent-2, for the Respondent

Judgement

Anand Byrareddy, J.—The present appeal by the claimants before the Commissioner for Workmen's Compensation, Belgaum (hereinafter referred to as "the Commissioner" for brevity), seek to question the finding of the Commissioner that the insurance company was not liable to pay compensation.

2. The facts of the case are as follows.--

The appellants herein are the parents of the deceased workman, who was working as a coolie in a vehicle which was a bore-well rig unit. On 21-3-2000 when the vehicle was taken to Holakoppa, Aneguddi Village and when the rig was being set up, an iron rod hammer weighing about 70 kilograms which was being installed, fell on the head of the deceased workman, who sustained grievous injuries and he was shifted to a hospital in Shimoga, where he succumbed to the injuries two days later. The vehicle involved in the accident is covered under an insurance policy which is a motor miscellaneous policy and the vehicle is defined as an Ashok Leyland rig unit. The claim petition was therefore filed against the insured and the insurer. The insured as well as the insurance company filed statement of objections. The cause of death was not denied by the insured. Only the age and wage were disputed. Whereas, the second respondent denied the

relationship between the insured and the deceased workman, his age and wage, as well as the fact that the accident had occurred during the course of the employment. It was also contended that even if the liability could be fastened on the insurance company, the risk of an employee working in the vehicle and while the vehicle was in use, alone was covered and in the instant case, the admitted fact being that the vehicle was parked on a private land and the installation of the bore-well unit being under progress, would have no nexus with the use of the vehicle and therefore, the insurance company was not liable. Though the Commissioner has not framed any issue as regards the nexus between the cause of death and use of the vehicle, the Commissioner has rendered a finding at para 13 of the award that there was no nexus between the use of the vehicle and the accident and therefore has absolved the insurance company of its liability. It is in this background that the appeal is filed and the following questions of law are raised.--

"(i) Whether the Commissioner is justified in not fastening the liability of making payment of compensation against the insurance company?

(ii) Whether the Commissioner is justified in holding that there is no nexus between the death of the deceased and use of the vehicle and the accident occurred (during the course of employment of respondent 1?

(iii) Whether the insurance ? company is liable to indemnify the owner of the vehicle?

(iv) Whether the Commissioner is justified in dismissing the application against respondent 2-insurance company?

(v) Whether the findings of the Commissioner are vitiated for non-consideration of evidence on record?"

3. Sri S.P. Shankar, Senior Advocate appearing for Sri Ravi G. Sabhahit for the appellant, raises the following contentions.--

The deceased workman was carried in the insured vehicle to the work-spot for the purpose of digging a bore-well. He was undoubtedly engaged for the purpose of loading and unloading rig related machinery and articles from the insured vehicle. While he was unloading, he suffered an employment injury, as an iron rod hammer weighing about 70 kilograms fell on his head and therefore the injury has occurred during and in the course of his employment under the insured. He would submit that it is a matter of record that the employer and the insurer did not choose to lead any evidence except the insurance company producing the policy of insurance and hence he would submit that the Commissioner was not justified in dismissing the claim petition against the insurer.

4. The next question would be whether the insured vehicle was stationary and whether the absence of actual use of the vehicle would justify absolving the insurer from liability. The Senior Advocate would submit that Ex. R. 1, which is a

copy of the policy contains, a specific provision that the policy is issued to meet the requirements of Chapters X and XI of the Motor Vehicles Act, 1988 ("the M.V. Act" for short) and the fact that the policy is issued as a miscellaneous policy, does not make any difference as long as the policy was issued covering the vehicle on which the rig was mounted and therefore would serve the required purpose of covering the risks arising out of use of the vehicle. The liability of the employer having been held affirmatively, such liability would have to be discharged by the insurer by reason of Section 149(1) read with Section 147(5) of the M.V. Act, and in the face of an embargo on the insurer to add any condition under the policy, which is not permitted u/s 149(2) vide Section 149(4) of the M.V. Act, the insurer cannot be permitted to absolve himself of liability on the ground that it is a miscellaneous policy and not a motor policy and that different tariffs and coverages are to be read into the policy. In any event, the insurance company has not produced a fully worded policy in order to adduce any evidence in respect of the same.

5. He would further contend that the use of the vehicle is not to be given the literary meaning, but has to be understood in the context of employment related situations. It was by virtue of his employment that the workman had travelled in the lorry as an employee of the insured and had admittedly suffered an injury in the course of his employment while unloading the iron rod hammer. Employment and the use of the vehicle are inextricably linked with each other. Thus the insurance company is not enabled to separate the link to avoid its liability. The definition of "workman" under the Workmen's Compensation Act, 1923 ("the W.C. Act" for short) as long as it is covered under Schedule II and when the schedule at Clause (vii) refers to employment purposes, it includes loading, unloading, fueling, constructing, repairing etc. And in the face of the admitted relationship, employment of the deceased with the insured and the fact that he had suffered an employment injury, there is a direct causal connection between the death of the employee and the insured vehicle. The risk is specifically covered by reason of proviso to Section 147(1) of the M.V. Act. The said proviso mandates that the insurer shall freely and compulsorily cover the liability under the Act for death or injury to a workmen under the W.C. Act. In effect, the provisions of W.C. Act are statutorily incorporated and read into the M.V. Act, 1988. A motor policy issued u/s 147(3) of the M.V. Act covers and is required to cover liability under the W.C. Act of the insured and if there is any ambiguity in construing the terms of contract of the policy of insurance, the doctrine of contra referendum ought to be applied, as held by the Supreme Court in the case of General Assurance Society Ltd. Vs. Chandumull Jain and Another, wherein, the Supreme Court has held that there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fidei i.e., utmost good faith on the part of the assured and the contract is likely to be construed contra referendum, that is, against the company in case of ambiguity or doubt. It is submitted that the main purpose of compulsory insurance is to provide aid to the victims of motor vehicle accidents.

The main purpose under a benevolent legislation such as the W.C. Act cannot be thwarted to accommodate a denial of liability by the insurer. The Supreme Court has endorsed this in approving the theory of main purpose rule and has held that an insurer having issued a policy to meet the requirements of Chapters X and XI of the M.V. Act, has to satisfy, the award in terms of the legislative mandate contained u/s 147(5) of the Act. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , it is held that the insurer cannot avoid liability except on the grounds enumerated in Section 149(2) of the M.V. Act and this provision again does not enable the insurer to avoid liability.

6. Per contra, Sri Krishnaswamy, appearing for the insurance company, would contend that the policy of insurance was a miscellaneous policy issued in respect of a special motor vehicle namely a rig unit and therefore, would be governed by a different tariff and different coverage and this policy covers the risk of third parties and not employees being carried in the vehicle. He would further submit that in any event, at the time of accident, the deceased workman was admittedly not being carried in the vehicle. He would next contend that the accident had occurred at a private place on a private property, namely, in the agricultural land belonging to a private party find not in a public place which is what the statute contemplates and the explanation to the proviso in Sub-section (1) of Section 147 of the M.V. Act, requires that the use of the vehicle is made in a public place. He would submit that an employee of the insured is not a third party and relies upon the case of British India General Insurance Company Limited v. Sabanna Sabanna 1967 ACJ 165 (Bom.), in which case the workman was injured while loading stones in a truck belonging to his employer and in a claim for compensation, interpreting the scope of Section 95(I)(b) of the Motor Vehicles Act, 1939, the Bombay High Court had held that an employee of the insured was required to be covered by a policy only if he was either engaged in driving the vehicle or was being carried in the vehicle and since none of the two conditions which specify the liability arising out of the accident was decided, the scope of the section and therefore the claim, could not be enforced against the insurance company. He would submit that no person other than those referred to in Section 147 of the M.V. Act were required to be covered and relied on the case of New India Assurance Co. Ltd. Vs. A. Sharifa Bivi and Others, , wherein it was held that a person who was employed as a driver and who died in an accident while performing duties other than driving, namely, in that case the driver had collected rents on behalf of his employer from third parties on his directions and was proceeding to meet the employer on his bicycle, when he met with an accident and died, the Court held that the insurance company would not be liable in terms of Section 147(I)(b) proviso (i) of the M.V. Act read with Sections 3 and 30 of the W.C. Act.

7. In reply, Sri S.P. Shankar, Senior Advocate, would submit that the expression "public place" is defined under the Act u/s 2(34) of the M.V. Act to mean any place where public has access. In the instant case, there is no evidence let in by the insurance company to demonstrate that the place where the accident had

occurred was not accessible to the public and this proposition is laid down by a decision of this Court in the case of B.K. Devapaiah Vs. Mahabala Shetty And Others, and the views of several other High Courts with regard to the liability of the insurer even when the accident takes place beyond the public place are in the cases of.--

(1) United India Insurance Co. Ltd. Vs. Roop Kanwar and Others, ;

(2) Motor and General Finance (India) Ltd. Vs. Mary Mony and Others, ;

(3) Sahodra Devi Vs. Ramnarayan Satyanarayan and Others, ;

(4) Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, ;

(5) Prakash Chemicals Private Ltd. Vs. Krishna Singh Sata Singh, ;

(6) Raj Kumar Vs. Kanhaiya Lal and Others,

8. In any event, such a bar being canvassed by the insurance company is not a permitted defence u/s 149(2) corresponding to Section 96(2) of the M.V. Act, 1939 as laid down by the Supreme Court in the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and as reiterated in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, . He would submit that Section 149(2) of the M.V. Act also does not enable the insurer to avoid liability on the ground that the policy issued is a miscellaneous policy and that the tariff of premium is different for a miscellaneous vehicle or that the accident did not occur in a public place. He would submit that a policy of insurance is issued in the prescribed form made available by the Indian Motor Tariff Advisory Committee, a delegatee of the Government of India in terms of Section 64-UC of the Insurance Act, 1938. Part II-B of Insurance Act deals with Tariff Advisory Committee and control of the tariff rates. It is the above committee which provides the insurer that the schedule of rates, the formats of policy, cover note, certificate of insurance and the like. An insurer is compulsorily required to follow instructions of the said Committee and an insurer cannot use different forms than prescribed for the issue of policy and the like and in the format prescribed, it must contain an endorsement that the policy is issued to meet the requirements of Chapters X and XI of the M.V. Act.

9. Insofar as the contention of the Counsel for the respondent that the policy of insurance did not cover employees carried in the vehicle and that it covers only third party risks is concerned and that an employee would not be a third party for purposes of Chapters X and XI of the M.V. Act, it is submitted by Sri Shankar that third party is defined under the Act u/s 145 of the M.V. Act, as including the Government. There is no indication that an employee would be excluded from the definition of being considered as a third party. Further, Section 147 of the M.V. Act and proviso thereto lays down that a policy shall not be necessary to cover a workman other than one who is covered under the W.C. Act. Further from a reading of Section 167 of the M.V. Act, it is clear that Section 167 of the

M.V. Act which provides for an option to lay a claim either under the W.C. Act or under the M.V. Act. Therefore, it is clear that the main purpose is to deliver compensation to the victim of the accident and it cannot be thwarted on specious pleas sought to be raised by the insurance company. The other contention that under a miscellaneous policy, workmen cannot be compensated as they are not third parties, would be undone by the fact that the policy of insurance itself refers to Chapters X and XI of the M.V. Act. Therefore, he would submit that in fact the Commissioner was acting without any basis in absolving any liability on the insurance company, in the absence of any evidence let in by the insurance company or any arguments canvassed on issues of law which are now sought to be raised by the insurance company and hence would form a substantial question of law.

10. On these rival contentions, I opine as follows.--

The finding of the Commissioner that the death of the workman was caused by an injury during and in the course of his employment, but it could not be related however to the use of the motor vehicle which was insured and therefore, the insurance company was absolved, is an erroneous finding. That the vehicle was a special vehicle namely a bore-well rig unit which is not used for any purpose other than as a bore-well rig unit, cannot be denied. The deceased workman was employed by the insured as a part of the team that would operate the bore-well rig unit. The movement of the vehicle from one point to another and the loading and unloading of equipment to operate the rig unit, was always in conjunction with the vehicle. The association of the workman with the vehicle and his presence on the fateful day, is only by virtue of his employment of operating of the rig unit carried in the vehicle. The iron rod hammer, which is a part of the rig unit falling on the workman while it was stationary, could not be any less an accident involving the use of the vehicle, if in a hypothetical situation, the hammer and the workman had fallen off a moving rig unit resulting in injury or death. [Therefore, it can be gainsaid that there was no semblance of a nexus between the injury and the use of the vehicle. I would draw reference to the case in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , wherein it is laid down that the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that the accident should be connected with the use of the motor vehicle, but the said connection need not be direct and immediate. This construction, no doubt enlarges the field of protection made available to the "victims of an accident and is in consonance with the beneficial object underlying the enactment. Viewed in this light, in my opinion, the employment injury suffered by the deceased workman can certainly be said to have a causal relation with the use of the vehicle.

11. The fact that the vehicle was insured is not denied. The contention that the policy of insurance is styled as a "miscellaneous policy" and therefore would not

cover the risk of employees being carried in the vehicle, is a contention put forth for the first time in appeal by the insurance company though a certificate of insurance was produced before the Commissioner, a fully worded policy containing all the terms and conditions, was never exhibited nor were any pleas taken before the Commissioner in this regard and therefore, the Commissioner did not have any basis to have arrived at any finding in this regard and in any event the Commissioner had not even framed an issue as to whether there was any nexus between the employment injury and the use of the insured vehicle. It would therefore be wholly unnecessary to embark upon a futile exercise of analysing the scope and ambit of the provisions of the M. V. Act in deciding the extent of liability vis-a-vis the workmen who were carried in the insured vehicle.

12. In the result, the following judgment.--

The appeal is partly allowed. The impugned award of the Commissioner is set aside insofar as it is found that the liability of the insurance company is absolved. Accordingly, the liability is joint and several as against the respondents.