
(2015) 02 KAR CK 0130

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 31019/2010 (MV), 31017, 31016, and 31018/2010

Gopal and Others

APPELLANT

Vs

Abdul Wahid and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0130

Hon'ble Judges : A.S. Pachhapure, J.

Bench : Single Bench

Advocate : B. Ali Mohammad, Advocate, for the Appellant

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—The insured has challenged the liability imposed on him for to pay compensation the death of Shivashankar and injuries to others in the accident occurred on 31.5.2006, while they were labourers unloading the lorry bearing No. KA32-410.

2. It is not in dispute that Shivashankar (deceased) and others injured were the employees on the lorry on the date of accident. The Tribunal granted compensation for the death of deceased and injured and directed the owner of the said lorry to pay the same exempting the insurer to pay the excess of the sum payable under the Workmen's Compensation Act.

3. The appellants have challenged the impugned judgment and award imposing the liability on the owner of the vehicle to pay the compensation in excess of the amount payable under the Workmen's Compensation Act.

4. The facts reveal that on 31.5.2006 Shivashankar (deceased) and other injured persons who were employees on the lorry bearing registration No. KA-32/410 and in the said accident on the aforesaid date, Shivashankar (deceased) sustained severe injuries and died and others have sustained injuries.

5. The claim petitions were filed before the Tribunal under section 166 of Motor Vehicles Act and the Tribunal has directed the insurer to pay the compensation in excess of the liability under the Workmen's Compensation Act.

6. This portion of the Judgment and Award impugned that has been challenged by claimants in these appeals.

7 Heard learned counsel for the parties.

8. The points that arises for my consideration is:

"Whether the Insurer is liable to indemnify the owner to pay the compensation to the appellants even in respect of the amount in excess of the liability under the Workmen's Compensation Act?"

9. The learned counsel for the appellants submits that the insured has paid Rs. 25 each for each employee to cover their risk in case of accident. He submits that under IMT 39 annexed to the policy, the insurer is liable to pay all the compensation that has been awarded.

10. On the other hand, the learned counsel for insurer supports the judgment and award passed by Tribunal and submits that the Tribunal was justified in directing the insurer to pay the liability to the extent under the Workmen's Compensation Act and insured is liable to pay the sum same in excess.

11. The insurance policy Ex. R-1 and policy bond Ex. R-3 are in respect of the vehicle in question. A sum of Rs. 25/- is collected by insurer to cover the risk of 4 employees, as could be seen from IMT 39 annexed to the police, which reads:

"IMT 39. Legal liability to persons employed in connection with the operation and/or maintaining and/or loading and/or unloading of motor vehicles. (For goods vehicle).

In consideration of the payment of an additional premium of..... It is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner) of conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner (whilst and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.

(Emphasis supplied)

12. As could be seen from, it is relevant to refer here that the insured has taken the risk against the liability under the Workmen's Compensation Act 1923 and subsequent amendments to the said Act, the fatal accidents Act, or event at Common Law in respect of the personal injury to the persons like driver, cleaner,

conductor and the persons employed from loading and unloading the vehicle not exceeding 7 in number. It is relevant to mention here that so far as the workman on the vehicle are concerned, it is the insurer to cover the risk of the employee under the Workmen's Compensation Act. An addition sum of Rs. 25/- has been collected by the insurer and even in respect of a claim under the common law, the insurer is bound to indemnify the owner. The claim petition filed u/s. 166 of M.V. Act is on the basis of the common law, liability for the risk undertaken for a person, who sustains injuries and therefore even in respect of such risk, the insurer is bound to indemnify the owner. Therefore, I am of the opinion that the Tribunal committed an error in directing the insurer to pay the said sum.

13. The appeals are allowed. The judgment and award challenged under these appeals are modified and the insurer is directed to pay compensation amount awarded with interest to the appellants/claimants.