
(2007) 06 KAR CK 0051
In the Karnataka High Court
Case No : M.F.A. No. 8522 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

Aishabi and Another

RESPONDENT

Date of Decision : 07-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 147, 2 (14)

Citation : (2008) ACJ 1718 : AIR 2007 Kar 155 : (2008) ILR (Kar) 208 : (2007) 6 KarLJ 482 : (2007) 4 KCCR 2338

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : M. Sowri Raju, for the Appellant; Chidambaram and R. Gopal, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—Whether a person travelling in a goods vehicle without the goods being carried by him can be brought within the expression "owner of the goods" u/s 14 of the Motor Vehicles Act, 1988 ("1988 Act" for short) and therefore, the insurance company is liable, is the question that calls for an answer in this appeal.

2. The facts briefly stated are to the effect that one Mohammed Isaac travelled in the lorry bearing No. KA-20/2911 with fish boxes and the journey started from Sagar and after unloading the fish boxes at Bhadravafhi the vehicle was returning back to Sagar and the said Mohammed Isaac travelled back in the said lorry. On the way near Kone Hosur, on account of the driver of the lorry losing control of the vehicle, the accident occurred and the lorry fell upside down., Mohammed Isaac and other passengers who were in the lorry sustained injuries and. Mohammed Isaac died subsequently. The claim petition filed by the mother of the deceased Mohammed Isaac was allowed by the MACT. Sagar. quantifying the compensation at Rs. 2.18,000/-. The liability was put on the appellant-insurance company. Aggrieved by the said award of the Tribunal, the insurance

company is in appeal.

3. The main contention put forward by the learned Counsel for the appellant Sri Sowri Raju is that at the time when the accident occurred, the deceased was found travelling as a passenger in a goods vehicle and not as a owner of the goods and therefore, no liability will fall on the insurance company. The Tribunal, therefore, was totally in error in putting the liability on the appellant to satisfy the award in respect of the claim made by the mother of the deceased. The question of insurance company becoming liable in respect of a person travelling as a passenger in a goods vehicle does not arise. Hence the impugned award of the MACT insofar as putting the liability on the appellant has to be set aside.

4. On the other hand, learned Counsel for the respondent-claimant Sri Chidambaram for Sri R. Gopal contended that a plain reading of Section 147 of the 1988 Act will go to show that the policy must cover the risk of liability in respect of any injury to any person including the owner of the goods or his authorised representative carried in the vehicle and therefore, it is very-clear from the expression "including owner of the goods" that the section does not contemplate the owner to necessarily travel in the vehicle with the goods. He also placed reliance on Rule 100 of the Karnataka Motor Vehicle Rules 1989 to submit that even under the said Rule, the owner or hirer or a bona fide employee of the owner or the hirer of the vehicle may be carried in a goods vehicle. Therefore, the learned Counsel submitted that in the instant case, although the deceased had unloaded the fish boxes at Bhadravathi he was returning in the same vehicle towards Sagar and therefore, it will have to be deemed that the deceased was travelling back as owner of the goods and therefore, the liability put on the insurance company by the Tribunal is just and proper and in accordance with the above provision of law.

5. In the light of the contentions urged as above, the question for consideration is, whether in the instant case, deceased Mohammed Isaac can be deemed to have travelled in the lorry at the time of accident as owner of the goods?

6. The facts which are not in dispute as could be seen from the material on record are; more particularly in view of the evidence of PW 1 who is the claimant before the Tribunal; that the deceased had travelled in the lorry along with fish boxes and after unloading them at Bhadravathi, the deceased was returning in the said vehicle and the accident occurred at about 2 p.m. Therefore, there is no doubt as to the deceased having been found travelling in the lorry in question at the time of accident without the "goods". Even in the claim petition, it is stated that the deceased had hired the vehicle for the purpose of transporting fish from Batkal to Bhadravathi and while he was returning, the accident occurred.

Section 147(1)(b) of the 1988 Act reads as under:

147. Requirements of policies and limits of liability

(1) In order to comply with the requirements of this Chapter, a policy of

insurance must be a policy which -

(b) Insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily (injury to any person, including owner of the goods or his authorised representative carried in the vehicles) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

Rule 100(1) of the Karnataka Motor Vehicles Rules 1989 is as follows:

100. Carriage of persons in goods vehicle-

(1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle.

Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle.

7. Whether the use of the expression "owner of goods" u/s 147(1)(b) will have to be construed as the person travelling with the goods or a person travelling without the goods? It is the submission of learned Counsel for the respondent that even though the deceased had unloaded the fish at Bhadravathi and as he was returning to Sagar in continuation of his journey, it will have to be deemed that the deceased was travelling as the owner of the goods. I am unable to agree with the said view put forward by the learned Counsel for the respondent-claimant for the following reasons:

It is an undisputed fact that at the time of accident there were no goods in the vehicle in question and the deceased Mohammed Isaac was travelling with other passengers in the vehicle. Therefore, one cannot construe that the deceased was travelling in the lorry when the accident occurred, as a owner of goods because there were no goods carried by him at that point of time. Secondly, it is not possible to interpret the expression owner of the goods as to mean that a person can travel as a owner of the goods without goods being carried by him. In coming to the conclusion, I have also taken note of the definition of the goods carriage u/s 2(14) of the 1988 Act which reads as follows:

Section 2(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not so constructed or adapted when used for the carriage of goods.

8. Therefore, reading together Section 147 and Section 2(14) of the 1988 Act, the inference that will have to be drawn is that the expression owner of the goods presupposes that the persons concerned will have to travel with the goods in order to come within the expression "owner of goods".

9. In the instant case, as there were no goods being carried in the vehicle in

question by the deceased at the time of accident, the conclusion that the deceased travelled as a passenger becomes inevitable. Once it is held that the deceased was a passenger in the goods vehicle the question of liability on the part of the insurance company will not arise. Therefore, the MACT was in error in coming to the conclusion that the deceased travelled as a owner of the goods. Hence, the said finding of the Tribunal is erroneous and unsustainable in law both on facts and in law and therefore, the liability will have to be borne by the owner of the vehicle in question.

10. In the result, the appeal is allowed. The impugned award of the MACT to the extent of saddling the liability is set aside and it is for the insured to satisfy the amount.

11. The amount in deposit shall be refunded to the appellant.