
(2007) 09 KAR CK 0069
In the Karnataka High Court
Case No : M.F.A. No. 10856 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Ambadas and Others

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (1) (i), 166, 2 (13)

Citation : (2008) ACJ 675 : (2008) ILR (Kar) 168 : (2008) 4 KarLJ 224 : (2007) 4 KCCR 2735

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.V. Nagarathna, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The insurer of the offending motor vehicle has called in question the judgment and award dated 24-05-2007 in M.V.C. No. 112/2004 on the file of the Prl. Civil Judge (Sr. Dn.) & MACT, Gulbarga, (for short "MACT").

2. One Parvati, along with her husband, while travelling in a lorry bearing Certificate of Registration No.KA-3 9/3299 to Bombay on 21 -10-2003 along with their goods, at about 2.30 a.m on Solapur-Pune Highway, the driver of the said vehicle - the 4th respondent, herein, drove the same in a rash and negligent manner due to which the lorry turned turtle, fell into a ditch and both Parvati and her husband succumbed to grievous injuries and died on the spot. Respondents 1 and 2, son and daughter of the deceased Parvati along with their maternal uncle the Respondent No. 3 jointly preferred Claim Petition u/s 166 of the Motor Vehicles Act, 1988 (for short the "Act") numbered as M.V.C. No. 112/2004 for Rs. 9,15,000/- as compensation. The 5th respondent, herein, arraigned as 2nd respondent before the MACT, being the owner of the lorry, on notice opposed the claim by filing statement of objections, interalia, contending that the deceased was proceeding to Bombay with food grains and that the insurer-appellant, arraigned as Respondent No. 3 in the petition, was liable to answer the claim.

The appellant too opposed the claim by filing Statement of objections contending that the deceased was an unauthorised gratuitous and fare paying passenger, not covered by the policy of insurance and hence not liable to answer the claim. The MACT, in the premise of the pleadings of the parties, while framing issues, framed Issue No. 2 as follows:

Whether the claimants are entitled for the compensation? If so, to what amount and from whom?

3. The MACT recorded the deposition of Respondent No. 2 -the 2nd claimant by name Mahananda, daughter of the deceased as PW-1 and marked 7 documents as Exhibits P-1 to P-7. For the respondent - appellant, one witness by name Maltesh was examined as RW-1 and a copy of the policy of Insurance was marked as Exhibit R-1. The MACT, considering all relevant material and appreciating the evidence both oral and documentary, recorded a finding in the affirmative over Issue No. 1 attributing actionable negligence to the driver of the lorry and awarded Rs. 2,39,400/- as compensation fastening the liability to pay the compensation, as the deceased Parvati was travelling along with her goods, being the owner of the said goods, by the impugned judgment and award.

4. Learned Counsel for the appellant submits that the appeal is restricted to questioning the fastening of liability on the appellant to pay the compensation.

5. Learned Counsel contends that the MACT fell in error in not noticing that the deceased Parvati was travelling along with her husband in the lorry in question on the relevant date and time, as a gratuitous and fare paying passenger with the dominant purpose of reaching Bombay, the place of work. In addition, learned Counsel contends that the evidence of P W-1, the 2nd claimant that whenever her mother visited Gulbarga - the place of residence, and on her return to Bombay - the place of work, carried 100 kgs. of Jowar and 100 kgs. of wheat in two separate bags along with utensils, which must be construed as "personal effects" and hence not falling within the definition of the term "goods" under Sub-section (13) of Section 2 of the Act. It is next contended that Section 147(1)(i) of the Act does not require the insurer to compulsorily insure and indemnify the insured against any liability that may be incurred by the insured in respect of the death or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle and in the absence of payment of additional premium to cover the risk, the MACT was not justified in fastening the liability on the appellant to make good the compensation. Learned Counsel for the appellant places reliance upon the decision of a three judge bench of the Apex Court in the case of *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (2003) 2 SCC 223.

6. Facts not in dispute are, Parvathi, succumbed to injuries in the accident that occurred due to the rash and negligent driving of the lorry. What is contended is that Parvati and her husband were travelling in the lorry not as owners of goods being transported to Bombay but with the dominant purpose of travelling to

Bombay along with personal effects, as gratuitous and fare paying passengers.

7. In order to deny the liability to pay the compensation in terms of the policy of insurance, the appellant would have to establish in defence that the deceased Parvati and her husband were travelling in the lorry on the ill-fated day and time as gratuitous and fare paying passengers, with 100 kgs of jowar and 100 kgs of wheat, indisputably belonging to them as "personal effects" and not "goods" as defined under Sub-section (13) of Section 2 of the Act. Sub-section 13 of Section 2 of the Act reads thus:

2(13). "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

"Personal effects" is defined in Chambers 21st Century Dictionary as a person's belongings especially those regularly carried about by them.

8. From the definition of the term "goods", it cannot but be said that what is excluded is luggage or personal effects or personal luggage of passengers travelling in the vehicle. In the instant case, material on record and the evidence of the claimants discloses that the deceased along with her husband were transporting 100 kgs. of jowar and 100 kgs. of wheat belonging to them from Gulbarga to Bombay. It may be that the deceased and her husband were engaged as labourers in Bombay, the place of work. But the fact remains that they travelled in the offending vehicle as owners of the said accompaniment, which may or may not be used for their personal purposes. Admittedly there is no evidence to support the contention that the deceased and her husband travelled as gratuitous passengers or fare paying passengers. In the light of the evidence of P W-1 and the established fact that 100 kgs of jowar and 100 kgs of wheat transported in the vehicle in question belonged to the deceased, it cannot straightaway be inferred that they are personal effects and personal luggage of the deceased. "Personal effects" and "Personal luggage" means such of those things as are regularly carried about by a person, perhaps materials in small bags, which by no stretch of imagination could be one hundred kilograms of Jowar and hundred kilograms of wheat. The contention of the learned Counsel for the appellant that the said 100 kgs. of jowar and 100 kgs. of wheat falls within the exception in the definition of the term "goods" under the Act, cannot be countenanced.

9. The evidence of RW-1, the Administrative Officer of the appellant - Insurance Company is not in the direction of establishing that the deceased and her husband had paid fare or were gratuitous passengers and that the load of 100 kgs of jowar and 100 kgs. of wheat were the personal effects or personal luggage of the deceased. In the absence of relevant material constituting substantial legal evidence over the said plea, it cannot but be said that the appellant failed to establish the plea put forth in the written statement.

10. The next contention of the learned Counsel for the appellant cannot be countenanced. I say so because, in Asha Rani's case, His Lordship Pattanaik, Chief Justice, as he then was, speaking for the Bench, observed thus:

The objects and reasons of Clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury.

11. Learned Counsel is correct in her submission that in the case of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, , while noticing the over-ruling of the decision of another co-ordinate Bench of the Supreme Court in the case of Ramesh Kumar Vs. National Insurance Co. Ltd. and Others, , followed the decision in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, that the effect of the 1994 amendment vis-a-vis Section 147 of the Act included only the owner of the goods or his authorised representatives carried in the vehicle besides third parties, who are gratuitous passengers or otherwise.

12. This decision, in my opinion does not assist the appellant in support of the contention that Section 147(1)(i) of the Act does not require the insurer to compulsorily insure and indemnify the insured against any liability that may be incurred by the insured in respect of death or bodily injury to any person including the owner of goods or his authorised representatives carried in the vehicle.

13. The legal position having been well-stated, it cannot but be said that the contention advanced by the learned Counsel for the appellant must necessarily fail and is accordingly rejected.

14. In the result, the appeal is without merit and is accordingly rejected. The Registry is directed to transmit Rs. 25,000/- in deposit to the MACT, forthwith.