
(2006) 06 KAR CK 0090
In the Karnataka High Court
Case No : M.F.A. No. 3988 of 2002

National Insurance Co. Ltd.

APPELLANT

Vs

Lagamanna Giddali, Sidram Shivappa Walki and Raosaheb
Dharigouda Patil

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 147 (1) (b), 149 (1)

Citation : (2007) ACJ 50 : (2007) 4 KarLJ 338

Hon'ble Judges : V. Jagannathan, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : A.N. Krishnaswamy, for the Appellant; Vigneshwar Shastri, for the Respondent

Final Decision : Allowed

Judgement

1. In this appeal, National Insurance Co. has questioned the finding of the Tribunal saddling liability on it to pay the compensation to the injured claimants.

2. We have heard learned Counsel Sri. A.N. Krishna Swamy for the appellant and the learned Counsel, Sri. Vigneshwar Shastri, for the respondents. It is contended by Sri. A.N. Krishna Swamy that the policy in question does not cover the risk of the coolies carried in the tractor-cum-trailor as no extra premium was paid to cover such a larger liability and in view of this position, it is not in dispute between the parties that the Tribunal could not have fastened the entire liability on the Insurance Co., but at the most, it could have confined the liability of the respondent - Insurance Co. to that which arises out of the Workmen's Compensation Act. In this regard, reliance is placed on the decision of the Apex Court. So far as the quantum of compensation is concerned, learned Counsel for the respondent has got no grievance. Therefore, the only issue is whether the Tribunal was right in fastening the entire liability on the Insurance Co.

3. In view of there being no dispute in so far as the facts of the case are

concerned and the policy in force not indicating extra premium being paid to cover the case of the injured claimant who was travelling in the vehicle in question, the Tribunal could not have put the entire liability on the Insurance Co. This conclusion of ours is fortified by the law laid down by the Apex Court in the case of National Insurance Co. Ltd. Vs. Prembai Patel and Others, . In the said case, the Supreme Court has laid down the following proposition of law :

The expression - "such liability as is required to, be covered by a policy u/s 147(1)(b) being a liability covered by the terms of the policy" - occurring in Section 149(1) is important. It clearly shows that any such liability , which is mandatorily required to be covered by a policy u/s 147(1)(b), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in Sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act. (Para 12)

The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in Sub-clauses (a) or (b) of (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show, with a clause to that effect that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited, depending upon the quantum of premium paid and the terms of the policy. Where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act. (paras 13 and 16)

The insurance policy taken by the owner in the present case contained a clause that it was a policy for "Act Liability" only. This being the nature of policy the liability of the appellant Insurance Co. would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly. In case the appellant Insurance Co. has deposited the entire amount awarded by the High Court with the Motor Accidents Claims Tribunal or has paid the said amount to claimants, it will be open to it to recover the amount, which exceeds-its liability under the Workmen's Act, from the owners of the vehicle, Respondents 1 and 2, in accordance with law. (Paras 16 to 18)

4. In the light of the above said settled position in law, we hold, the Tribunal was

in error in putting the entire liability on the Insurance Co. Therefore, the liability has to be worked out in terms of the provisions of the Workmen's Compensation Act. That will come to Rs. 2,62,164/ - with interest that is payable by the Insurance Co. on the said amount Therefore, out of the award amount of Rs. 6,18,000/-, the liability of the Insurance Co. is restricted to the above said amount and as far as the balance is concerned, it is the responsibility of the owner of the vehicle in question to pay the compensation to the claimants. The claimants are given liberty to proceed against the owner in so far as the balance amount is concerned.

5. If the amount in deposit is in excess of the liability on the Insurance Co. as fixed by us, as above, the same shall be refunded to the Insurance Co. If on the other hand, the amount deposited is lesser than what we have fixed, the balance shall be deposited by the Insurance Co.

6. Out of the amount which the Insurance Co. has deposited, the respondent - claimant shall be paid Rs. 1,50,000/- towards future treatment. The respondent - claimant is at liberty to approach the tribunal for the said purpose.

7. In the result, Appeal stands allowed.