

(2011) 10 KAR CK 0012

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5999 of 2007 (MV/GEN)

National Insurance Co. Ltd.

APPELLANT

Vs

Sri Abdul Khader and Others

RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0012

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Lexplexus, for the Appellant;

Final Decision : Allowed

Judgement

B. Sreenivase Gowda

1. This appeal is by the insurer of the offending vehicle challenging the judgment and award made by the Tribunal on the ground of liability. R 1 and R 2 who are the owner and claimant though were served with the notice of this appeal remained unrepresented and have not chosen to contest the appeal. Hence, I have heard the learned Counsel appearing for the appellant-insurer and perused the judgment and award of the Tribunal.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 11.07.2002 due to rash and negligent riding of Tata 404 Tempo bearing registration No. KA-19- 706 by its driver and quantum of compensation awarded by the Tribunal, the only point remains for my consideration in this appeal is;

Whether the Tribunal is justified in fastening the liability against the insurer of the offending vehicle.

4. Ms. Deepa, for M/s Lexplexus learned counsel appearing for the appellant submits that the claimant in his complaint lodged to Police, has stated that on 11.07.2002 at about 6.00 a.m. when he boarded the offending tempo at Padingi in order to go to Central Market, Mangalore to purchase vegetables and when it reached Malali cross near Ganjimata a cow suddenly came across the road and therefore the driver of the offending tempo applied sudden break and as a result, the vehicle was capsized and due to the impact he sustained injuries and he has not stated anything about hiring of the said vehicle as contended by him in para 22 of the claim petition. Therefore, she submits the Tribunal is not justified in fastening the liability against; the appellant-insurer by directing them to pay compensation awarded by it to the claimant.

5. I have carefully gone through the judgment and award of the Tribunal and perused the records as well. It is to be noted that in para 22 of the claim petition the claimant has averred that on 11.07.2002 he hired the offending tempo to bring vegetables from Central Market, Mangalore and when it reached Malali cross near Ganjunata at 6.15 a.m., a cow suddenly came across the road, therefore the driver of the offending tempo applied sudden break and as a result the vehicle was capsized and due to the impact he sustained injuries. Whereas in the complaint Ex. P 2 lodged by the claimant to the police it is stated that on 11.07.2002 at 6 a.m. as usual he boarded the offending tempo at Padingi in order to go to Central Market. Mangalore to purchase vegetables and when it reached Malali cross near Ganjimala at 6.15 a.m.. a cow suddenly came across the road and therefore the driver of the offending tempo had applied sudden break and as a result the vehicle was capsized and due to the impact he sustained injuries. He has not stated anything about hiring of the offending tempo, nor it was his case that he was travelling in the offending tempo along with goods. Even in the spot mahazar Ex. P 3 there is no mentioning about existence of goods. Apart from that the claimant in support of his contention that he had hired the offending tempo to bring vegetables from Central Market, Mangalore has not chosen to examine either the owner or the driver of the offending tempo. Thus, in the absence of any evidence to show that the claimant had hired the offending tempo to bring vegetables from Central Market., Mangalore it is to be held that he was travelling in the offending tempo as a gratuitous passenger. Therefore the Tribunal is not justified in applying the principles laid down in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and fastening liability against the appellant-insurer of the offending tempo and it is liable to be set aside.

6. Accordingly the appeal is allowed. The judgment and award of the Tribunal in so far it relates to fastening liability against the insurer of the offending tempo is set aside and the liability is fastened against the owner of the offending vehicle i.e. 2nd respondent who is directed to pay compensation awarded by the Tribunal to the claimant with upto date interest within two months from the date of receipt of a copy of this judgment. The amount deposited by the appellant is ordered to be refunded to them.

No order as to costs.