

(2009) 12 KAR CK 0041

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8580 of 2005

National Insurance Company Limited

APPELLANT

Vs

Smt. Nagamma alias Nagarathna and Another

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 3 KarLJ 45

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; M.R. Nanjunda Gowda, for Respondent-1, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Respondent 1 herein had filed claim petition u/s 166 of the Motor Vehicles Act, 1988 against the appellant and the 2nd respondent contending that on 12-9-1998 at about 3.30 p.m. she along with others after loading carrot into the tempo bearing registration No. KA 03 B 6669 were travelling in the tempo and at Giddappanahalli, the driver of the tempo drove the vehicle in a rash and negligent manner endangering human life and safety of others and suddenly applied brake, due to which tempo turtled and fell into agricultural land and as a result she sustained severe injuries and she was shifted to Government Hospital, Devanahalli and later on to Sanjay Gandhi Hospital, Bangalore for better treatment. She had sustained the fracture of left clavicle, fracture of the 1st and 2nd ribs of the left side. She took treatment as an inpatient and thereafter as an outpatient. She filed the claim petition for award of compensation of Rs. 1,00,000/-.

2. Respondent 1 in claim petition was the owner of the vehicle and respondent 2 was the insurer. Respondent 3 was the driver, who remained ex parte. Owner of the vehicle did not file written statement. Insurance Company filed the written statement denying the claim made in the claim petition. It was contended that

the petitioner was a passenger in a goods vehicle and there is violation of provisions of the Motor Vehicles Act and that respondent 2 is not liable to pay any compensation. It was further pointed out that the vehicle in question is a light goods vehicle made to carry goods not exceeding 990 kgs., and as per Rule 100(1)(ii) of the Karnataka Motor Vehicles Rules, 1989, the total number of persons/employees which it shall carry shall not be more than three and in the present case as per the contents of Ex. P. 1-FIR, the vehicle had more than 15 persons at the time of the accident and the policy does not cover the risk of carrying the passengers except the employees other than driver, not exceeding six in number.

3. On the basis of the rival contentions, the following issues were framed by the Tribunal:

(i) Whether the petitioner proves that she was a loader/coolie employed by the 1st respondent in his vehicle No. KA03-B-6669 and on 12-9-1998 at about 3.30 p.m., near Byanna's land, in the limits of Karahally the driver drove it rashly and negligently and lost control and as a result the vehicle turtled and fell in the land of Byanna and she sustained grievous injuries?

(ii) Whether the 2nd respondent proves that the petitioner was not a coolie and she was passenger in LGV and hence not entitled to claim compensation from the insurer?

(iii) Whether the petitioner is entitled for compensation? If so, what amount and from whom?

(iv) What award or order?

4. Mother of the petitioner deposed as P.W. 1. One Y.S. Shiva Kumar was examined as P.W. 2. Exs. P. 1 to P. 9 were marked in evidence. For the respondents, none was examined. Considering the oral and documentary evidence on record, with reference to the rival contentions, the Tribunal held that the petitioner was a loader/coolie employed under the 1st respondent in his vehicle and the accident took place on account of actionable negligence on the part of its driver. It further held that the petitioner has sustained grievous injuries. The contention of the Insurance Company that the petitioner was not a coolie and she was a passenger was negatived. As a result of its finding, it assessed the loss and passed an award for Rs. 78,000/- with interest at 6% p.a. from the date of petition till its realisation. Aggrieved, the Insurance Company has filed this appeal.

5. The only contention urged by Sri O. Mahesh, learned Counsel appearing for the appellant is that, Tribunal has erred in awarding Rs. 78,000/- as against the appellant-Insurance Company, without restricting its liability to the provisions of Workmen's Compensation Act, 1923. He relied upon the decision in National Insurance Co. Ltd. Vs. Prembai Patel and Others, and the Full Bench decision of this Court in Karnataka State Road Transport Corporation and Others Vs. Smt. R.

Maheshwari and Others, It was contended that, the injured being a coolie under the insured in respect of the insured goods tempo, the liability of the appellant-insurer should have been restricted to the provisions of the Workmen's Compensation Act and in not doing so, Tribunal has committed material error and illegality.

6. Per contra, Sri M.R. Nanjunda Gowda, learned Counsel for the 1st respondent/petitioner contended that, appellant has not come to the Court with clean hands, as it did not produce the insurance policy before the Tribunal and the appellant is guilty of suppression of material facts. Learned Counsel made submissions in respect of findings and conclusions of Motor Accident Claims Tribunal and sought upholding of impugned judgment and award.

7. Keeping in view the submissions made by the learned Counsel for the 1st respondent/petitioner that the appellant has satisfied another award, learned Counsel was directed to produce the record, if any, in that regard. Certified copy of the judgment and award passed in MVC No. 223 of 1999 on the file of MACT was produced. It is seen therefrom that, the award passed in the said case has been satisfied by the appellant. In view of the said fact, learned Counsel for the appellant was directed to produce the copy of the insurance policy pertaining to the instant case. The policy was produced and a perusal of it shows that, liability of the appellant can be restricted to one arising under the provisions of Workmen's Compensation Act. The Tribunal has accepted the claim of the petitioner that she was travelling as a coolie in the vehicle at the time of accident. If that be so, in terms of the conditions of policy, the liability of the appellant has to be assessed on the basis that the injured being a coolie, appellants liability is restricted in terms of the provisions of Workmen's Compensation Act. By applying the said yardstick, the liability of the appellant gets restricted to Rs. 23,568/- Hence, the Tribunal has committed an error in not examining the matter with reference to the liability of the appellant in terms of the provisions of Workmen's Compensation Act and in passing the award as if the liability of the appellant is unrestricted. The Tribunal has not perused the policy, since it was not produce and it did not have the benefit of perusing the policy. Since the policy is required for disposal of the case, appellant was directed to produce the same, which was produced and after perusal of the policy conditions, the liability of the appellant is restricted to the provisions of Workmen's Compensation Act and by so restricting, I hold that the appellant is liable to pay the compensation to the 1st respondent/petitioner at Rs. 23,568/- with interest at 12% p.a. after the expiry of 30 days from the date of accident i.e., from 13-10-1998, till the date of deposit (Shri Aleemuddin and Others Vs. The Divisional Manager, New India Assurance Company Limited,

In the result, the appeal is allowed in part. In modification of the judgment and award passed by the Tribunal, it is held that the 1st respondent/petitioner is entitled to compensation in a sum of Rs. 23,568/-, which shall carry interest at 12% p.a. from 13-10-1998, till the date of deposit. The amount in deposit in this

appeal is hereby directed to be transferred to the Tribunal for necessary action.
Ordered accordingly.