

(2003) 09 KAR CK 0027
In the Karnataka High Court
Case No : M. F.A. No. 1880 of 2003

New India Assurance Co.

APPELLANT

Vs

Annappa Laxman Karamoshi and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2005) ACJ 66 : (2004) ILR (Kar) 1077

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant; Shetty and Hegde Assts. for R3 and R4, R1 and R2, for the Respondent

Judgement

K.L. Manjunath, J

1. This appeal is by the Insurance Company challenging the Judgment and Award dated 1st January 2003, passed by the Civil Judge, Sr. Dn. Gokak, in MVC No. 786/97.

2. The respondents 3 & 4 in this appeal were the claimants before the Tribunal. They presented a claim petition on account of the death of their son Basavaraj who died in a road traffic accident. According to the claim petition, the deceased Basavaraj, was an employee of the 1st respondent-Annappa Laxman Karamoshi. The 1st respondent is the owner of the Tractor and Trailer bearing No. KA-23/T-1601 and KA-23/T-1602 and the same has been insured with the appellant returning in the tractor and trailer, in question to their home. As it was a new moon day, while returning from the work, on their way to home they had been temple to perform Pooja. While returning from the temple, the Tractor and Trailer met with an accident. Basavaraj, an employee died in the accident and other collies of the 1st respondent got injured. Therefore, the respondents 3 and 4 presented a claim petition claiming compensation on account of the death of their son Basavaraj.

3. The appellant - Insurance Company resisted the claim contending that the appellant is not liable to satisfy the award as the accident has not been occurred during the course of the employment. According to the appellant, the deceased and others were the passengers in a Tractor and Trailer and the vehicle was engaged to visit the temple. The Tribunal after recording the evidence held that the quantum of compensation awarded has to be satisfied by the Insurance Company. Against the said Judgment and Decree the present appeal is filed.

4. I have heard the learned Counsel for the parties.

5. According to the learned Counsel for the appellant, the deceased and others who were travelling in the Tractor and Trailer could not have been considered as the employees of the first respondent. Alternatively, contends that the appellant - Insurance Company is not liable to satisfy the award as the accident has not occurred during the course of the employment since the Tractor and Trailer in question was used in order to visit a temple.

6. The learned Counsel for the appellant, relying upon the Judgment of the Supreme Court reported in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, requests the Court to allow the appeal.

7. Per contra, the learned Counsel for the claimant's contends that the deceased was an employee of the 1st respondent and after discharging the day's work, the deceased and his co-employees were returning home in a Tractor and Trailer. Therefore, it has to be held that the accident occurred during the course of the employment. She further contends that since the accident has occurred during the course of transit from the place of the employer and the place of work, it has to be construed as an accident arising in the course of employment. Therefore, the respondent Counsel requests this Court to dismiss the appeal.

8. Having heard the learned Counsel for the parties, what is required to be considered by this Court in this appeal is:

"Whether the deceased was an employee of the 1st respondent and whether the accident occurred during the course of the employment?"

9. The 1st respondent has not contested the matter before the Tribunal. The appellant-Insurance Company has also not placed any material to show that the deceased was not an employee of the 1st respondent and that he was a passenger in a Trailer. The evidence of the claimants has not been seriously challenged by the Insurance Company in regard to the relationship of the deceased and the 1st respondent. Therefore, in these circumstances, this Court has to hold that the deceased was an employee of the 1st respondent.

10. Then the remaining question to be answered by this Court is whether the accident has occurred during the course of the employment?

11. The Judgment relied upon by the learned Counsel for the appellant is a Judgment delivered by the Hon'ble Supreme Court while dealing with a case

under the Workmen's Compensation Act, 1923 and also under the ESI Act. In the said case, the accident had occurred beyond the place of factory premises. Therefore, the Hon'ble Supreme Court held that the accident occurred outside the factory premises and as such the accident cannot be held to be an accident occurring, arising in the course of the employment.

12. In the instant case, we are dealing with an accident arising out and during the course of employment. In respect of the Motor Vehicle, the policy was issued u/s 147 of the Motor Vehicles Act. The evidence adduced by the claimants discloses that, from the residence of the employer, the deceased as well as other co-employees had been to the place of work and while returning home, as it was a Full Moon day, the vehicle had been taken for Pooja, to a temple and after performing pooja, the deceased and other co-employees were returning home and at that point of time, the accident has occurred.

13. From this, it is clear that the accident has taken place when the vehicle was used for the purpose of business or the work of the employer and the deceased died in the said accident; therefore, it has to be held that the accident has occurred during the course of the employment. According to this Court, the work of the employees will be completed only when the employer discharges his employees from the duties. As the deceased as well as the other co-employees were still on the duty, even if the vehicle had been taken to temple for performing pooja, it has to be held that the deceased was on duty when the accident took place.

14. In the circumstances, I do not see any merit in this appeal. Accordingly, the appeal is rejected. The amount in deposit shall be transferred to the Tribunal.