
(2005) 06 KAR CK 0014
In the Karnataka High Court
Case No : M.F.A. No's. 4804 and 4806 of 2002

New India Assurance Co. Ltd.

APPELLANT

Vs

Gangavva Basavanappa Sunagar and Another

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2007) ACJ 1915 : (2006) 2 KCCR 1118

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Ravi G. Sabhahit, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The two appeals arise out of the same accident. In both the cases, respondent No. 1-petitioner and the other employees were being transported from their workplace to their residence in H.G.V. tipper. Accident occurred resulting in injury to the petitioner-respondent No. 1. Petitioners are the employees of respondent No. 2, owner of tipper, but they are not employed in connection with the operation of the insured vehicle. The definition of the workman in relation to motor vehicles under the Workmen 's Compensation Act, 1923, reads thus:

(n) "workman" means any person who is--

XXX XXX XXX (ia) (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

Section 147 of the Motor Vehicles Act, 1988 reads thus:

147. Requirements of policies and limits of liabilities.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

The close reading of the proviso discloses that it is obligatory for the insurer to insure the risk of the employees under Workmen's Compensation Act. The risk and liability of the other employees of the employer need not be covered by way of Act policy. In the present case, the injured petitioners are the employees of respondent No. 2 but not employed in connection with the operation of the motor vehicle. The Tribunal has found that the policy issued is the Act policy. Therefore, under the Act policy, petitioner-injured would be unauthorised passengers in goods vehicle. The insurer is not liable to pay compensation. The compensation awarded shall be payable only by the owner.

2. Accordingly, the appeals are allowed. The award made against the appellant is set aside. Amount in deposit shall be refunded to the appellant.