(2005) 03 KAR CK 0019

In the Karnataka High Court

Case No : M.F.A. No. 2823 of 2001

New India Assurance Co. Ltd. APPELLANT

Vs

Prakash and Another RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 147 (1)

Citation : (2006) ACJ 258

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Mylaraiah Associates, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—Respondent No. 1 injured while travelling in Ambassador car bearing registration No. KA 09-M 717 belonging to the respondent No. 2 met with an accident on 29.9.1998 and suffered the loss of vision of one eye. The injured states that he is the employee of respondent No. 2 herein and was travelling in car belonging to respondent No. 2 to go to workplace. Therefore, the accident occurred in the course of and out of employment as such made a claim for compensation against the owner and the insurer of the car. The Workmen''s Compensation Commissioner awarded compensation of Rs. 1,06,257 and directed the insurer to pay the amount. Aggrieved by the said award, the insurer is in appeal.

2. The following substantial question of law arises for consideration:

Whether Workmen''s Compensation Commissioner is legally correct in directing the insurer to pay the compensation when the policy issued does not cover the risk of any of the employees except the driver in case of a private vehicle?

3. The relevant provisions of Section 147(1) of the Motor Vehicles Act are being extracted hereunder for convenient reference:

147. Requirements of policies and limits of liability.-(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.

4. Admittedly, the vehicle is a private car owned by the respondent No. 2. The occurrence of the accident and injuries to the claimant is not in dispute. The policy issued by the insurer is only an Act policy.

5. In respect of goods vehicle, the risk of the employees, i.e., driver, cleaner and the loaders to the maximum of six persons is to be covered as required under the Workmen''s Compensation Act. In the case of passenger transport vehicle, the driver, conductor and passengers have to be covered by the Act policy.

6. But in the instant case, it is neither a public passenger vehicle nor a goods vehicle. The vehicle is only a private car. There is no special contract between insurance company and the insured to cover the risk of the inmates.

7. In that view, the award granted against the appellant insurer is bad in law. The question of law is answered in affirmative. The compensation is to be payable only by the owner since the accident has occurred in the course of and out of employment. Accordingly, appeal is allowed. The award made against the

appellant is set aside. The amount in deposit to be returned to the appellant.