(2008) 10 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1127 of 2003

New India Assurance Company — APPELLANT

Vs

Jayashree Alias Laxmi and Others — RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 123 (1), 123 (2), 147 (1) (b)

Citation : (2009) 5 KarLJ 654 : (2010) 1 KCCR 495

Hon'ble Judges : Manjula Chellur, J;K.N. Keshavanarayana, J

Bench : Division Bench

Advocate : R. Jaiprakash, for the Appellant; D.R. Nagaraj, for Respondents-1 and 2 and S.C. Vijayakumar, for Respondents-1 and 2-NOC, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—Heard the learned Counsel for the appellant-Corporation and also the respondents -claimants.

2. So far as occurrence of the accident and death of the deceased when the driver of bus in question was negotiating a turn and the deceased-Jagannath falling from the roof of the bus in which he was travelling, it is not seriously disputed. The insurer-appellant is not even questioning the age, occupation, earnings and quantum of compensation awarded on account of the death of the deceased.

3. The only question the appellant''s Counsel persistently persuaded us to accept is that the deceased-Jagannath was not a passenger in the strict sense of definition of ''passenger'' defined under Karnataka Motor Vehicles Rules, 1989 who was covered u/s 147(1)(b) of the Motor Vehicles Act, 1988.

4. It is not in dispute that deceased-Jagannath was travelling on 5-2-1997 from Dodderikatte to Channageri Taluk in the offending but when he fell down from the roof of the bus, sustained head injuries and subsequently succumbed to the said head injuries. So far as evidence for the appellant-insurer is concerned,

except cross-examining the witnesses for the claimants, no evidence like that of the driver or the conductor who had the first information about the accident and the details of the accident are not brought on record.

5. From the material on record we do not find any positive evidence indicating that neither the driver nor the conductor nor any other responsible employee of the owner of the bus did object for the deceased-Jagannath to go on to the roof of the bus for travelling to reach his destination. Unfortunately, on account of the accident he reached some other destination when the driver of the bus negotiated a curve driving the bus in a rash and negligent manner.

6. One Hanumanthappa was examined as P.W. 2. He is none other than the junior paternal uncle of deceased-Jagannath. According to this gentleman he was sitting inside the bus while deceased-Jagannath was on the roof of the bus. According to him the accident occurred when the bus took a turn and 5 or 6 persons fell down from the roof of the bus. Unfortunately, the Counsel appearing for the appellant before the Tribunal did not elicit any positive evidence in favour of the insurer that there was enough or sufficient space or accommodation inside the bus for the deceased-Jagannath and others to occupy the seats inside the bus, nor the driver or conductor or any other person responsible for the owner of the bus objected for the deceased-Jagannath and others to go over to the roof of the bus for their travel. The very fact that 5 or 6 persons were sitting on the roof of the bus would only indicate that there was no space or enough accommodation inside the bus to travel. Apparently, the bus was coming from rural area. In the absence of the insurer-appellant bringing on record that inspite of enough space inside the bus and inspite of caution or objection by the driver or the conductor of the bus for the deceased and other passengers to travel on the roof of the bus, in view of the definition of ''passenger'' under Karnataka Motor Vehicles Rules, we have to hold that deceased was also a passenger travelling in the bus at the time of the accident in question.

7. Learned Counsel for the Insurance Company brought to our notice the requirements of policies and the limits of liability as contemplated u/s 147 which does not cover risk i.e., either injury or death of a passenger who was travelling on the roof of the bus.

Section 147(1)(b) reads as under:

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) ....

(b) insures the person or classes or 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.

We do not find that there is positive prohibition of travel of such passenger or positive banning of covering of such risk of the passenger who travel on the roof of the bus. The only indication u/s 147(1)(b) is any passenger of a public service vehicle is covered whenever there is a death or bodily injury to such passenger during the accident arising out of the use of a vehicle in a public place. In the strict sense of Sub-section (1)(b) of the Section 147, the deceased was a passenger, who was traveling in a public transport and he died in an act arising out of the use of a vehicle in a public place.

8. The learned Counsel also brought to our notice Rule 148 of the Karnataka Motor Vehicles Rules which refers to seating room inside the transport vehicle. This would only indicate that in order to get the permit for running the bus the owner has to make the seating arrangement as indicated under Rule 148 of the Rules. He also referred to Section 123(1) and (2) which reads as under:

Riding on running board, etc.-(1) No person driving or in-charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

(2) No person shall travel on the running board or on the top or on the bonnet of a motor vehicle.

From Sub-section (1) of Section 123 a duty is cast on the driver or the person who is in-charge of the motor vehicle to see that no person is carried on the running board or otherwise than within the body of the vehicle. So also Sub-section (2) of Section 123 prohibits travel of a person on the running board or on the top or on the bonnet of a motor vehicle. As already stated above, there is nothing on record to show that any attempt was made by the driver or the person in-charge of the vehicle stopping he passenger from travelling on the roof of the bus. This would only indicate that such violation would invite penal action by the police concerned or the law enforcing authorities. None of the terms and conditions of the policy would indicate that the insurer would not cover the risk of such persons.

9. Under these circumstances, we are unable to accept the submission of the learned Counsel for the appellant-insurer that the death c deceased-Jagannath cannot be compensated though it is arising out of user of the offending bus as submitted by him.

Accordingly, the appeal is dismissed. The amount in deposit shall be transferred to the Tribunal concerned. The balance amount shall be deposited within eight weeks from the date of receipt of the order.