

(2005) 02 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 920 of 2003

New India Assurance Company Limited

APPELLANT

Vs

Danappa and Another

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

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

Citation : (2005) 2 ACC 795 : (2006) ACJ 2073 : (2005) 2 KarLJ 488 : (2005) 2 KCCR 893

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : R. Jayaprakash, for the Appellant; Basavaraj M. Mekki, for Respondent-1 and A. Ananda Shetty, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—The appellant-Insurance Company, which was respondent 2 before the Workmen's Compensation Commissioner at Chitradurga in WCA. CR. No. 26 of 2000, has challenged the order dated 23-12-2002 since, according to it, the respondent 1-claimant was not working as cleaner or cleaner-cum-conductor or conductor-cum-cleaner under the second respondent and the compensation awarded is not proper.

2. Facts, giving rise to the present appeal, are: The second respondent is the owner of bus bearing No. KA 16/4009, in which passengers are carried on hire. According to the claimant, he was employed by the second respondent as conductor-cum-cleaner on the said vehicle. He was being paid Rs. 60/- per day besides bhatta for working as conductor, and Rs. 40/- per day for working as cleaner. When he was working as conductor in that bus on 19-1-2000, it met with an accident near P.D. Kote Cross due to its rash and negligent driving and in that, he sustained injuries during the course of his employment.

So, he claimed compensation stating that the vehicle had insurance coverage as

on the date of accident and as such, the Insurance Company as well as second respondent are jointly and severally liable to pay compensation.

The respondent 2-owner of vehicle, in his objections, though denied the statement made by claimant in para No. 2 as false, while stating true facts pleaded that the claimant was working as conductor-cum-cleaner on his bus getting Rs. 50/- per day as daily wages including "bhatta", but denied para No. 3 of the claim petition relating to accident and his liability besides sustaining injuries by the claimant, though admitted insurance of the vehicle, and requested to dismiss the petition.

In its objections, the appellant-Insurance Company denied working of the claimant as cleaner or conductor or conductor-cum-cleaner under the second respondent on the vehicle on the date of accident and, even otherwise, the claimant was not qualified nor eligible to be conductor nor the respondent 2-owner could engage him as conductor against the provisions of Motor Vehicles Act, 1988. According to it, the claimant was only a passenger and as such disputed its liability to pay compensation and requested to dismiss the claim petition.

The claimant has examined himself as P.W. 1, doctor as P.W. 2 and got marked 7 documents in support of his claim. The respondent 2-owner did not examine himself or any witness, nor got marked any document. On the other hand, the appellant-Insurance Company has examined a witness and got marked insurance policy record. On considering the evidence, the Commissioner has upheld the claim of the claimant and awarded compensation of Rs. 90,860/- and directed the appellant-Insurance Company to pay the same. So, the appellant-Insurance Company is before this Court,

3. It was vehemently argued for the Insurance Company that when the claimant himself has stated in his complaint before Police that he was working as a "cleaner" under the second respondent and when no documentary evidence is produced and when even the second respondent had not stepped into the witness-box to say that the claimant was working as a conductor-cum-cleaner or cleaner-cum-conductor and not as cleaner, the Commissioner was not right in holding that the claimant was working as conductor-cum-cleaner under the second respondent, even if assumed that the claimant was working under the respondent 2 at the time of accident, as admittedly the claimant was not qualified to possess conductor's licence and in fact, he was not holding conductor's licence and as such, neither he could have been engaged as conductor by the second respondent, nor he could have worked as conductor under the second respondent and that, at any rate, the compensation awarded by the Commissioner is not at all proper when the evidence on record is considered carefully and as such, requested to interfere with the impugned order. On the other hand, the learned Counsel for the claimant and respondent 2 have supported the impugned order. Perused the records carefully.

4. So, the substantial question of law for consideration is:

"Whether the compensation awarded to the claimant as conductor is sustainable under law?"

5. It is the case of the claimant that he was working as a conductor-cum-cleaner on the bus, getting Rs. 60/- per day with bhatta as conductor, and Rs. 40/- per day for his work as a cleaner. He has specifically stated in the claim petition that he was working as conductor at the time of the accident.

However, it is worth to note that neither any witness has been examined nor any document has been produced by him in support of his said claim that he was working as conductor or conductor-cum-cleaner.

On the other hand, Ex. P. 1-F.I.R. produced and marked for him only shows that he lodged complaint before Police as cleaner of the vehicle. In fact, P.W. 1 admitted in his cross-examination that he had personally lodged complaint to Police. But, strangely, when suggested, denied that in Ex. P. 1 he has shown himself as cleaner. However, it is not brought on record that if he had not lodged complaint, who else had lodged complaint, that too, in his name, and why such a complaint came to be lodged in his name showing him as a cleaner. That apart, he has not stated that the complaint lodged, as found in F.I.R. at Ex. P. 1, is false. This is important for the reason that nowhere said Ex. P. 1-F.I.R. shows the claimant was working as a conductor or conductor-cum-cleaner under the second respondent-owner of bus. So, this is against his pleading found in the claim petition, referred to already.

6. That apart, his evidence as P.W. 1 is also not in accordance with his pleading because, in evidence, he has stated that as conductor-cum-cleaner he was getting Rs. 60/- as wages, Rs. 40/- towards bhatta and Rs. 30/- per day towards meals, without stating the wages or bhatta he was getting as cleaner.

7. Added to this, it is also important to note that even the respondent 2-owner of the bus also denied the statement found in the claim petition that the claimant was working under him as conductor-cum-cleaner, as is clear from the first and second paragraphs of the objections/counter-filed by him. Of course, in the next sentence itself, he has admitted claimant's working as a conductor-cum-cleaner but on Rs. 50/- per day as daily wages including bhatta. This again does not corroborate the case of the claimant so far as wages and bhatta are concerned.

That apart, respondent 2-owner of the bus, has not stepped into the witness-box nor examined any witness nor produced any record in support of his said objections filed nor tried to explain in any manner the self-contradictory statement found in his counter/objections, though it was necessary for the respondent 2 (owner of the bus) to come forward and explain the same, but did not do for the reasons best known to him. So, the counter/objections filed by the respondent 2 (owner of the bus) does not come to the aid of claimant. So also the unreported decision of this Court in the case of New India Assurance

Company Limited v. Lingappa and Anr., M.F.A. No. 5741 of 2002, DD: 9-12-2003 as complaint was by claimant and owner is not examined in the case.

8. According to the Insurance Company, the claimant was only a passenger and not a conductor or conductor-cum-cleaner at the time of accident. In support of its stand, it has examined a witness, who stated that the claimant was not working under the respondent 2 (owner of the bus) and he was only a passenger in the bus at the time of accident and as such, not covered by insurance policy. So also, he stated that policy does not cover the risk of a cleaner and hence, requested to dismiss the claim petition as the claimant and owner of the vehicle are in collusion.

9. It need not be said that conductor and cleaner are different. Of course, a conductor could be a cleaner and a cleaner could also be a conductor as well, But, it is not in the pleading or evidence of the claimant that for some reason or the other, he could not mention in his complaint before Police that he was working as a conductor also though he had shown himself as cleaner in the complaint or, that he signed the complaint blindly when somebody else prepared or, that the conductor and cleaner mean the same or, that by some reason or the other, he wrongly mentioned himself as a cleaner in the complaint. So also, it is not his case or evidence that though he was not holding conductor's licence, he was discharging his duties as conductor.

In spite of that, there was change in the stand of the claimant from his complaint made before Police to the claim petition before the Commissioner and probably it was because, he could not have approached the Commissioner for compensation as cleaner, if he had not pleaded by changing his earlier stand in the complaint as cleaner. Thus, the evidence on record shows that the claimant has failed to prove that he was working as a conductor or conductor-cum-cleaner or cleaner-cum-conductor.

10. However, without considering the evidence which is against the claimant or, holding why that evidence be rejected or why the evidence of the claimant-P.W. 1, not supported by any record or circumstance or evidence whatsoever, has to be preferred, the Commissioner has held claimant as conductor-cum-cleaner, though contradicted by his own complaint found in F.I.R. at Ex. P. 1.

11. Further, in the present case, insurance coverage is for the driver and conductor and it does not extend to cleaner or any other workman employed by the owner-respondent 2 of the bus, as admittedly, the accident was on 19-1-2000. So, Section 147(1)(b) of the Motor Vehicles Act, 1988, which is relevant for the purpose of the present matter and different from the provision contained in Section 95 of the old Act of 1939 extracted below applies:

"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) XXX XXX XXX

(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".

12. Thus, fourth category of employee found in Section 95 of the old Act, which covered the liability of the Insurance Company in respect of passengers carried for hire or reward or by reason of or any pursuance of a contract of employment, is not found. In other words, a person other than the categories of employees mentioned in Clauses (i)(a) to (i)(c) of the proviso to Section 147(1)(b) referred to above, is not now covered by Section 147 of the Motor Vehicles Act. Hence, even if assumed and held that the claimant was working as a "cleaner" as stated by him in his complaint lodged by him before Police at the earliest opportunity after the accident and was not a passenger, then also, in view of Section 147(1) (b) of 1988 Act, he would be a passenger and not an employee covered by insurance policy and as such, the claimant is not a person covered by policy of insurance under the Act to fasten the liability with the Insurance Company. This view is supported by a decision of the Supreme Court in the case of Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, . So, considered from any angle, the finding recorded by the Commissioner that the claimant working as a conductor or conductor-cum-cleaner is entitled to compensation from the Insurance Company, is not sustainable under law.

In view of the above, the impugned judgment and award awarding compensation to the claimant as conductor require to be quashed.

In the result, the appeal is allowed and set aside the impugned judgment and award and consequently, the claim petition of the claimant stands dismissed.

In the circumstances, parties to bear their cost.