(2005) 03 KAR CK 0016

In the Karnataka High Court

New India Assurance Company Ltd. APPELLANT

Vs

Kalappa Channappa Hanchimani and Another RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (2), 147 (2) (b), 2 (13)

Citation : (2005) 3 ACC 104

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Judgement

Huluvadi G. Ramesh, J.—This is an appeal by the insurer being aggrieved by fixing of the liability regarding payment of compensation for the damage caused to the claimant''s property in M.V.C. No. 2398/2002 by the III Addl. Civil Judge (Sr. Dn.) and Addl. MACT., Belgaum. The claim petition was filed by the claimant-respondent No. 1 stating that on 18.9.2002 around 7.00 p.m. one Shekhar Basawaneppa Bodaki and his wife were returning from their agricultural land to home in the bullock cart carried by two bullocks belonging to the said Shekhar. Shantawwa being relative of the said Shekhar was using the bullock cart for the purpose of agriculture and they were proceeding towards Hirebagewadi in left side of the road by observing the traffic rules. But, in the meanwhile a goods truck bearing No. MEH-5086 came from Hirebagewadi side in a rash and negligent manner in a great speed and dashed to the bullock cart. Due to the impact, both Shekhar and his wife sustained grievous injuries and thereafter one of the bullocks died and another bullock sustained injuries. Further, the bullock cart was completely damaged. Claiming compensation for the damage to the bullock cart, an independent claim petition was filed in M.V.C. No. 2398/2002. The said claim petition was contested by the insurer and also the owner. Based on the pleadings, the Court below has raised as many as three issues and held that the accident was caused due to the negligence of the driver of the goods truck bearing No. MEH-5086 belonging to the respondent and in that accident a bullock died and another bullock sustained injuries and bullock cart was completely damaged. After having so held, it has awarded a compensation of Rs.

15,000/- towards the death of one bullock and Rs. 5,000/- towards injury caused to the other bullock. While awarding compensation of Rs. 15,000/- to the damage of the bullock cart, Rs. 3,000/- was awarded towards idle charges, in all Rs. 38,000/- was awarded. However, the liability was placed on both the insurer and the owner jointly and severally.

2. Being aggrieved of placing of the liability jointly on the insurer and the owner insofar as in excess of Rs. 6,000/- as per the statutory provisions, the insurer is before this Court challenging the same on various grounds.

3. Heard the Counsel for the insurer/appellant and the respondent. It is the submission of the learned Counsel appearing for the appellant that the word ''goods'' as per Clause (13) of Section 2 of the Motor Vehicles Act, 1988 includes ''livestock'' and he referred to Section 145(e), the definition of ''property'', which reads thus:

"Property" includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees posts and milestones.

He further submitted that placing of the liability insofar as the amount in excess of Rs. 6,000/- requires to be modified as the claimant has to recover the same from the owner of the vehicle in question. Accordingly, he submitted that as per Section 147(2) of Motor Vehicles Act, 1988, the liability of the insurer is only in respect of the damage to any property of third party which is limited up to Rs. 6,000/-, when it is an Act Policy and accordingly submitted that the impugned order be modified.

4. Learned Counsel for the respondent has submitted that the property does not include the animals, i.e., bullocks cannot be brought within the definition of property, the bullocks have to be treated as other than property for which there shall be liability on the insurer to make good the compensation. Of course insofar as the bullock cart is concerned, may be the insurer is liable upto Rs. 6,000/- if it is an ''Act Policy''. Accordingly, submitted that insofar as the damages awarded in respect of death of bullock as also injury caused to another bullock, for which compensation has been awarded by the Tribunal are concerned these have to be placed under the insurer itself.

5. Having heard the learned Counsel appearing for the respective parties, the point that arises for consideration is whether the insurer''s liability is only limited to Rs. 6,000/- and whether placing of the liability on the insurer in respect of the entire amount requires modification.

6. The owner of the vehicle although has been served with a notice after arraying as respondent No. 2, neither he has appeared nor appeared through anybody. As per the findings of the Tribunal and also on the material available on record, there is said to be death of a bullock and another bullock was said to be injured. For the death of one bullock Rs. 15,000/- has been awarded and for another injured bullock Rs. 5,000/- is awarded and as noted above, Rs. 15,000/-has been

awarded towards damage to the bullock cart and idle charges of Rs. 3,000/-.

7. According to the submission of the learned Counsel for the appellant, by a reading of the definition of ''property'', bullock which died in the accident also has to be treated as the property in its true sense. Accordingly, insurer exempted from the liability insofar as the death and injury to another bullock to place the liability on the owner of the goods are concerned.

8. As per the definition of ''property'' as noted above, goods carried in the motor vehicle also constitute the definition of ''property''. For that it is to be noted that these bullocks are not bullocks being carried in the motor vehicle and another aspect, namely, in the definition itself, it is referred to ''property'' that is being also carried on the roads, bridges, culverts, causeways, trees posts and milestones. The definition of ''property'' is exhaustive which is defined in the Concise Law Dictionary refers to every species of property and further it is noted at pages 680 and 681 of the Concise Law Dictionary that the word is a generic term for all that a person has domain over and, however, may be the bullocks are treated as the property of a man in the literal sense but for all practical purposes the animals are to be treated as having its own existence, it cannot be treated as if it is an object. The bullocks have to be treated as a living being on par with the human being and placing the liability on the insurer instead of treating the same as either as object or any other movable or immovable property. I am of the considered opinion that these bullocks cannot be exhaustively treated as mere property for purposes of Section 147(2)(b). Of course, in this context the bullock cart purely falls within the definition of the property in view of the fact that the policy is said to be an ''Act Policy'' with limited liability on the insurer to the extent of only Rs. 6,000/- although the amount of Rs. 15,000/- has been awarded towards damages and another Rs. 3,000/- as idle charges.

9. The liability of the insurer will be to the extent of Rs. 26,000/- i.e., Rs. 15,000/- towards the death of one bullock and another Rs. 5,000/- towards the injury to another bullock and Rs. 6,000/- towards damage to the bullock cart. The remaining amount of Rs. 12,000/- has to be saddled on the owner.

10. Accordingly, the appeal is allowed in part. The insurer is liable to pay Rs. 26,000/- together with interest at the rate of 6% per annum from the date of the petition till the date of deposit. The remaining amount of Rs. 12,000/- with proportionate interest has to be recovered by the claimant from the owner/ insured with proportionate costs. The amount in deposit may be transferred to the Tribunal for disbursement.