

(1992) 02 KAR CK 0036
In the Karnataka High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Hanumantappa and others

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 D, 95

Workmens Compensation Act, 1923 — Section 4, 95 (2)

Citation : (1992) ACJ 1083 : (1993) 76 CompCas 411 : (1992) ILR (Kar) 1335 : (1992) 2 KarLJ 183

Hon'ble Judges : N.Y. Hanumanthappa, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; S.R. Shivaprakash and H. Kantharaja, for the Respondent

Judgement

Rama Jois, J.—In these three appeals presented u/s 110D of the Motor Vehicles Act, 1939, the following two questions of law arise for consideration :-

"(1) Whether the insurance company with which a tractor and a trailer propelled by the tractor are insured is liable to pay compensation in respect of death of or bodily injury to persons traveling in the trailer ? and

(2) If the answer to the first question is in the affirmative, what is the extent of liability of the insurance company ?"

2. Briefly stated, the facts of the case are these : On March 5, 1985, the tractor - trailer bearing Registration Nos. MEU 9801 and 9802 respectively were being used for the purpose of transporting country manure from Hottiganahally village to the land of respondent No. 1, After unloading the manure, when the tractor was on its way back to Hottiganahally, there was an accident. As result, three employees who were engaged as labourers for loading and unloading the manure and who were traveling in the trailer sustained severe injuries and died as a result of the injuries so sustained. Three claim petitions were presented. They are :

(i) M.V.C. No. 469 of 1985, in which the petitioner - claimant claimed compensation for the death of his wife, Halamma, aged 30 years, on the allegation that the accident had occurred on account of the rash and negligent driving of the tractor - trailer by its driver. The claimant stated that she was a labourer on a monthly income of Rs. 250. He claimed compensation of Rs. 1 lakh.

(ii) M.V.C. No. 437 of 1985 was presented by the parents of the deceased Ananda who was aged 16 years on the allegation that their son Ananda was employed on a monthly income of Rs. 100 and while he was engaged for the purpose of transporting country manure and was travelling in the trailer, he died due to the accident caused on account of rash and negligent driving of the tractor - trailer.

(iii) M.V.C. No. 435 of 1985 was presented by the claimant claiming compensation for the death of his wife, Gangamma, who was aged 28 years on the allegation that the accident occurred on account of rash and negligent driving of the tractor - trailer by its driver. The claimant stated that she was a labourer on a monthly income of Rs. 300. He claimed compensation of Rs. 1 lakh.

3. The first issue for consideration by the Tribunal was as to whether the accident occurred on account of the rash and negligent driving of the tractor - trailer by its driver. The issue was answered in the affirmative. As regards the quantum of compensation, the Tribunal awarded compensation of Rs. 21,400 in M.V.C. No. 469 of 1985, Rs. 29,000 in M.V.C. No.437 of 1985 and Rs. 23,800 in M.V.C. No. 435 of 1985. The Tribunal fixed the liability both on the owner of the vehicle - first respondent and also the insurer of the tractor - trailer MEU 9801-9802, namely, the Oriental Fire and General Insurance Company. Aggrieved by the said order, the appellant - insurance company has presented these appeals.

4. In these appeals, the contention of the appellant is that the Tribunal could not have fixed any liability on the appellant for the reason that the tractor - trailer could be used only for agricultural purposes and carry only agricultural implements and other materials connected with agricultural operations and that no person could be carried legitimately in the trailer and, therefore, the insurance company was not liable.

5. As against the above contention of the appellant - insurance company, it is contended for the claimants that the tractor - trailer was a "goods vehicle" within the definition of that word contained in section 2(8) of the Act and, therefore, the insurance company was liable to pay compensation in respect of the employees carried in the trailer as also the driver of the tractor in terms of section 95 of the Act.

6. The first point, therefore, for our consideration is whether a tractor - trailer falls within the definition of the words "goods vehicle". In order to decide the above point, it is necessary to refer to the relevant definitions contained in section 2 of the Act. Section 2(18), (30) and (32) define the words "motor vehicle", "tractor" and "trailer". They read :-

"2. (18) `motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises ...

2. (30) `tractor" means a motor vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion but excludes a road - roller....

2. (32) `trailer" means any vehicle other than a side car drawn or intended to be drawn by a motor vehicle."

7. As can be seen from the above definitions, firstly, a tractor is a motor vehicle as defined in section 2(18). Secondly, a tractor is a motor vehicle which itself is not constructed to carry any load, but is meant to be used for the purpose of propulsion of a trailer. Thirdly, the trailer is defined as a vehicle other than a side car drawn or intended to be drawn by a motor vehicle. In the present case, the tractor in question was used for the purpose of propulsion and the trailer was being drawn by the vehicle, namely, the tractor. There is no dispute that the tractor falls within the definition of the words "motor vehicle". Section 2(33) defines "transport vehicle" and section 2(8) defines "goods vehicle". They read :-

"2. (33) `transport vehicle" means a public service vehicle or a goods vehicle....."

"2. (8) `goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers."

8. Thus, it may be seen that a "goods vehicle" is a transport vehicle and a goods vehicle means any motor vehicle constructed or adapted for the use of the carriage of goods or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. There can be no doubt that a trailer is constructed for the purpose of carriage of the goods and when it is pulled by a tractor, both together constitute a transport vehicle, i.e., a goods vehicle. In fact, a tractor - trailer owned by an agriculturist is meant mainly for the purpose of carriage of goods/materials connected with agricultural operations or for any other bona fide purpose of the agriculturist. A tractor - trailer owned by any other person could be for carrying any goods for purposes of which the person owns the tractor - trailer. Therefore, a tractor - trailer squarely falls within the definition of the words "goods vehicle".

9. Once we come to the conclusion that a tractor - trailer is a motor vehicle, it follows that section of the Act requiring insurance of motor vehicles meant to be used in a public place gets attracted. Further, section 95(1) and (2) of the Act which prescribes the requirement of policies and limits of liability also apply. The said requirements are :

(i) in respect of third parties ; and

(ii) in respect of driver of the vehicle and the persons carried in the vehicle to the extent provided for in section 95. The limits of liability in respect of third parties and persons travelling in a vehicle are specified in sub - section (2) of section 95.

10. A policy which is taken in conformity with section 95 has also come to be known as an "Act Policy" The question to what extent the insurance company is liable under an "Act Policy" by the force of section 95(1) and (2) of the Act in respect of persons carried in a "goods vehicle" has been the subject matter of decision of the Full Bench of this court in *National Insurance Company v. Dundamma* 1992 75 Comp Cas 141 The relevant portion of the judgment reads (page 178):

"The wording of the proviso to section 95(1)(b) indicates that as far as employees travelling in a vehicle, such as a person driving a vehicle, a conductor or ticket examiner in a public service vehicle, and employees carried in a goods vehicle are concerned, the risk is required to be compulsorily covered, though in view of section 95(2)(a) such compulsory coverage of risk in respect of a goods vehicle is restricted to six. As far as any other persons travelling in a vehicle by reason of or in pursuance of a contract of employment are concerned, such travelling could be only in a vehicle in respect of which a permit is secured to carry passengers for hire or reward. To illustrate, a stage carriage, or a contract carriage which includes a motor cab, might be engaged by any employer for providing free conveyance to his employees from their residence to the place of work and vice versa. In such a situation also, though the employees do not pay any hire, as their travelling in such a vehicle is by reason of or pursuant to a contract of employment, the risk in respect of death or bodily injury to such person resulting from an accident is also required to be compulsorily covered in view of sub - clause (ii) of the proviso to section 95(1)(b) of the Act. Whatever that may be, passengers travelling in a goods vehicle, other than employees, are not required to be covered by a policy issued in terms of section 95 of the Act, by the force of clause (ii) of the proviso to section 95(1)(b) of the Act."

11. As held earlier, as a tractor - trailer is a "goods vehicle" in view of the Full Bench decision, it is clear that, under an "Act policy", the insurance company concerned is liable to pay compensation in respect of the death of or bodily injury to persons who are coolies or employees and who are travelling in the tractor - trailer to the extent provided for in sub - section (2) of section 95 of the Act and the liability is restricted to the compensation payable under provisions of the Workmen's Compensation Act to the employee or his dependants, as the case may be. Further, according to sub - section (2) of section 95 of the Act, the liability of the insurance company is limited to six employees other than the driver. Therefore, we hold that, in respect of a tractor - trailer also, the insurance company is liable to pay compensation in respect of the death or, or bodily injury to, employees carried in the tractor - trailer subject to the maximum of six and the liability is limited to the compensation payable under the provisions of the

Workmen's Compensation Act.

"Class `A(3)" - Trailers. - i.e., any truck, cart, carriage or other vehicle without means of self - propulsion including agricultural implements drawn or hauled by any self - propelled vehicle, policies may be extended or a separate policy issued to cover trailers at the following rates subject to such trailers and towing vehicles being insured on identical terms with the same company. The premium must be calculated at the rate applicable to the highest rated class of vehicle that will tow the trailer(s) at any time.

----- When towed by
Premium per trailer a vehicle rated ----- under :
Comprehensive Liability to Act only the public liability risks
----- Rs. Rs. Rs. (A)
Towing of one Class A(1), 56.00 + 1/2% 16.00 12.00 trailer only (inre- B, C or D
on IEV spective of number own goods) of trailers insured) Class A(2)
81.00+1/3% 22.00 17.00 or D (carriage- of goods for hire or reward) Class D-
16.00+1/2% - "-. Agricultural- on IEV and Forestry vehicle- Item B.

12. The fact that tractor - trailers are covered under the Commercial ;Vehicle Tariffs also supports our conclusion that they have got to be treated as "goods vehicle" as defined in section 2(8) of the Act.

13. For the aforesaid reasons, we answer the two questions set out first as follows :

(1) The insurance company with which a tractor and a trailer attached thereto are insured is liable to pay compensation in respect of death of, or bodily injury to, employees travelling in the trailer.

(2) The liability is limited to six employees and the extent of the liability is limited to the amount of compensation payable under the provisions of the Workmen's Compensation Act unless, in a given case, the owner concerned has taken extra coverage by paying an extra amount of premium.

14. Now, coming to the facts of each of the three cases, the position is as follows :

(1) M.F.A. No. 988 of 1988 arising out of M.V.C. No. 469 of 1985 :

In this case, the claimant is the husband. The deceased is Halamma, who was aged 30 years. According to the evidence given by the claimant, she was getting monthly was of Rs. 250. Under the Workmen's Compensation Act, the liability to pay compensation is 40 per cent. of the monthly wages by the prescribed factor. For the age of 30 years, the factor prescribed is 207.98. The monthly wages of the deceased was Rs. 250. The total compensation payable come to Rs. 20,798. The Tribunal has awarded a compensation of Rs. 21,400. The liability of the insurance company has to be limited to Rs. 20,798.

(2) M.F.A. No. 989 of 1988 arising out of M.V.C. No. 437 of 1985 :

In this case, the claimants are the parents and the deceased was their son, Ananda, aged 16 years. His wages were Rs. 100 per month. The appropriate factor applicable to this age group is 228.54. The total liability under the Workmen's Compensation Act calculated on this basis comes to Rs. 9,141.60. But learned counsel for the appellant does not controvert the submission made for the claimants that, in view of section 4 of the Workmen's Compensation Act, the minimum amount of compensation payable in the case of death of a workman is Rs. 20,000. The Tribunal has awarded a compensation of Rs. 29,000 less Rs. 15,000 awarded u/s 92A of the Act. The appellant - insurance company is, therefore, liable to pay Rs. 20,000 and the interest thereon excluding the amount, if any, already paid.

(3) M.F.A. No. k990 of 1988 arising out of M.V.C. No. 435 of 1985 :

The claimant in this case is the husband. He claimed compensation in respect of death of his wife, Gangamma, aged 20 years. She was said to be earning Rs. 300 per month. The appropriate factor applicable to this age group is Rs. 224. Forty per cent. of the monthly wages multiplied by the relevant factor comes to Rs. 26,800. The Tribunal has awarded only a sum of Rs. 23,800. Therefore, the insurance company is liable to pay the entire compensation awarded by the Tribunal.

15. In the result, we make the following order :

I. M.F.A. No. 988 of 1988 :

(i) The appeal is partly allowed ;

(ii) The award made in M.V.C. No. 469 of 1985 is modified and the liability of the insurance company is fixed at Rs. 20,798 and interest thereon as awarded by the Tribunal ;

(iii) the rest of the amount shall be recoverable from the first respondent.

II. M.F.A. No. 989 of 1988 :

(i) The appeal is partly allowed ;

(ii) The liability of the appellant - insurance company is restricted to Rs. 20, 000 and the interest thereon.

III. M.F.A. No. 990 of 1988 :

(i) The appeal is dismissed ;

(ii) The insurance company is liable to pay the entire amount of compensation awarded as it is less than the amount of liability under the provisions of the Workmen's Compensation Act.

IV. In other respect, the award made by the Tribunal regarding.