

(2000) 10 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No's. 6839 to 6842 of 1999

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Husensab Goususab Talikaoti and Others

RESPONDENT

Date of Decision : 25-10-2000

Acts Referred:

Karnataka Motor Vehicles Rules, 1989 — Rule 100
Motor Vehicles Act, 1988 — Section 147, 149, 96, 96 (2)

Citation : (2001) ACJ 2008

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; Laxman T. Mantagani and B.H. Sathish, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Mohamed Anwar, J.—By this batch of writ petitions, the petitioner Oriental Insurance Co. Ltd. (hereinafter referred to as "the insurer") prays to set aside the common judgment and separate awards dated 20.8.98 of the Motor Accidents Claims Tribunal, Saundatti ("the Tribunal" in short) made in M.V.C. Nos. 1161, 1162, 1564 and 1565 of 1997 fastening the liability on the insurer to pay the compensation amounts under the said awards to the respective claimants-award holders.

2. Admittedly, petitioner was the insurer of the offending heavy goods vehicle, i.e., lorry bearing No. MYL 7471 of respondent No. 1 (in short "the insured") and that the said vehicle was covered by the Act policy of the insurer at the material time when it met with accident on 6.5.96 while it was transporting the injured victims who were travelling therein along with their goods. The only ground involving the point of law, on which the liability of the insurer under the impugned judgment and awards challenged is that the insurer having satisfied seven other awards of the Tribunal passed under the same common judgment in M.V.C. Nos. 815 of 1996; 81, 1815 and 1589 of 1997; 551, 554 and 555 of 1998

fulfilling the requirement of Rule 100 of the Karnataka Motor Vehicles Rules 1989 ("the Rules of 1989" for short), the insurer is not liable in law to satisfy the impugned awards also.

3. It is not in dispute that the claims of the injured victims/dependants of the deceased victims in all the aforementioned cases had arisen from the said accident involving the said vehicle. The insurer and R-1 owner were respondent Nos. 4 and 2 respectively before the Tribunal; and R-2, R-3, R-4 and R-5 herein were the respective claimants in the said M.V.C. Nos. 1161, 1162, 1564 and 1565 of 1997 before the Tribunal. It is not in dispute that the aforesaid seven awards in other claim cases of the Tribunal passed have been satisfied by the insurer in discharge of its liability in terms of Rule 100 of the Rules of 1989. Therefore, the only point for determination which now calls for is whether the finding of the Tribunal that the insurer is also liable to satisfy its four other awards impugned herein is legally correct or not.

4. For this purpose, necessarily we have to advert to the relevant provisions of the Motor Vehicles Act, 1988 ("the Act" in short) and the Rules framed thereunder. Section 146 of the Act makes the insurance of the transport vehicles imperative for their use in a public place and Section 147 provides for requirements of insurance policies and the statutory limits of insurer's liability thereunder. Admittedly, at the time of accident, the said offending lorry in the instant case was covered by a valid policy of insurance issued by the petitioner, fulfilling the requirement of Section 147. Section 149 enjoins that it is the duty of insurers of the vehicles to satisfy judgments and awards of the M.A.CTs. indemnifying the persons insured against third party risks. Chapter V of the Act deals with "Control of Transport Vehicles". Section 96 occurring in this Chapter confers power on the State Government to make rules for the purpose of carrying into effect the provisions of this Chapter. Clause (xxxi) of Section 96(2) specifically provides for making of rules by the State Government in respect of carriage of persons in the goods carriage. It reads:

96. Power of State Government to make rules for the purposes of this Chapter:-

(1) xxx xxx xxx (2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:

(i) to (xxx) xxx xxx xxx (xxxi) the carriage of persons other than the driver in goods carriages;

Rule 100 of the Rules of 1989 has been framed to give effect to Clause (xxxi) of Section 96(2). It consists of 6 Sub-rules. For our purpose, only Sub-rule (1) is relevant, which reads:

100. Carriage of persons in goods vehicle.-(1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle:

Provided that the owner or the hirer or a bona fide employee of the owner of the

hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle, the total number of persons so carried,-

(i) in light transport goods vehicle having registered laden weight less than 990 kg. not more than one;

(ii) in any other light transport goods vehicle not more than three; and

(iii) in any goods vehicle not more than seven:

xxx xxx xxx

5. Now, it is not in dispute that the said offending lorry in the instant case was a heavy goods vehicle. Therefore, it attracts and was governed by Clause (iii) of the proviso to Sub-rule (1) of Rule 100. This provision read with Clause (xxxi) of Section 96(2) makes it clear that excluding the driver, in all seven employees of the owner or hirer of the vehicle or for that matter seven hirers of the vehicle were permitted to be carried therein. Therefore, in the case in hand, all the victims of the accident having been shown to be travelling in the vehicle along with their goods, shall have to be taken as hirers of the vehicle for transportation of their goods therein. In that view of the matter, it follows that by reason of the said Act policy of the petitioner insurer issued respecting the said vehicle, the insurer becomes liable to indemnify the insured owner of the vehicle against his liability to satisfy seven of the awards passed in the aforestated batch of claim cases by the Tribunal, since the driver of the vehicle has to be excluded from consideration for the purpose of determining the extent of insurer's liability as envisaged in Clause (xxxi) of Section 96(2) read with Rule 100. Hence, the finding of the Tribunal that the insurer is liable to satisfy all the said awards exceeding the statutory limit of seven in number cannot be sustained in law.

6. As stated, it is an undisputed fact that the aforementioned seven other awards of the Tribunal have been satisfied by the insurer. Therefore, the insurer having discharged its statutory limit of liability by satisfying the aforestated seven awards for compensation arising out of the same accident, it cannot be further fastened with the liability to satisfy the four impugned awards of the Tribunal as well. In that view of the legal position, the petitions deserve to be allowed.

7. Hence, for the reasons aforesaid, all these petitions are allowed. The petitioner-insurer is held not liable to satisfy the awards of the M.A.C.T., Saundatti, passed in M.V.C. Nos. 1161, 1162, 1564 and 1565 of 1997; and that the Tribunal's order in these respective awards holding the insurer also liable to satisfy them is set aside. The said awards made in the said claim cases, viz., M.V.C. Nos. 1161, 1162, 1564 and 1565 of 1997, shall stand modified accordingly.