

(2011) 05 KAR CK 0009
In the Karnataka High Court
Case No : M.F.A. No. 12587 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Shoba and Others

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Citation : (2012) ACJ 2297 : (2011) 5 KarLJ 30

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : P.B. Raju, for the Appellant; C.G. Asha Devi, for R1 and 3 and H.V. Rajaram, for R6, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Copy of the paper publication filed by the Appellant - Company is accepted. Notice to Respondent-5 is held sufficient.

2. Since the appeal is of the year 2006, by consent of parties, the appeal is heard and disposed of on merits

3. The Insurance Company is before this appeal challenging the liability saddled on it by the MACT, Bangalore, dt. 19.4.2006 in MVC No. 6666/04.

4. The facts leading to this case are as hereunder;

The Respondents-1 to 4 are the legal heirs of one Raju @ Rajanna who died In a road traffic accident occurred on 4.5.2004. On which date the deceased was sitting on the engine of a Tractor bearing No. MYU-5158. The said Tractor had also a Trallor bearing registration No. MY-5159. The insurance Company contested the case on the ground engine alone was Insured but not the Trallor and if the accident has taken place on account of the deceased travelling either on the Trallor or on the engine of the Tractor, the risk of such person is not covered under the policy. Therefore, It requested the court to dismiss the petition. The Trial Court based on the evidence let in by the parties awarded a

total compensation of Rs. 4,33,000/-. However, the liability has been fastened on the Insurance Company. Being aggrieved by the fixing of the liability on the Appellant - Insurance Company, the present appeal is filed.

5. We have heard the learned Counsel for the parties,

6. The main contention of Sri. P.B. Raju, the learned Counsel for the Appellant is that Tractor No. 5158 alone was insured but not Tractor No. 5159. According to the claimants Advocate, even though the deceased was travelling on the engine, since Tractor engine has been covered, liability has been rightly fixed on the Insurance Company. Taking us through the Policy issued by the Appellant-Insurance Company, she contends that a sum of Rs. 25/- is collected under the head, employee/driver. Therefore even if the deceased was not the driver of the Tractor, since he is an employee, the liability has been rightly fixed on the Appellant- Insurance Company.

7. Per contra, learned Counsel for the Appellant contends that the word used in the printed form of the policy that employee-cum-driver has to be applied strictly only in regard to the driver of the Tractor engine as there is no seating capacity of an employee is provided to a Tractor engine. Therefore, he requests this Court to allow the appeal and dismiss the claim petition against the Appellant herein by absolving the liability fastened on the Appellant -insurance Company.

8. Having heard the counsel for the party, the only point to be considered by this Court in this appeal is whether the Appellant has to satisfy the compensation awarded by the Tribunal to the Respondents-1 to 4.

9. Since the facts of this case are not in regard to the cause of accident, relationship of master and servant between the owner of the tractor and the deceased, what is required to be considered by us is only in regard to the liability of the Appellant -Insurance company.

10. We have perused the policy Issued by the Appellant The Appellant - Company has collected a sum of Rs. 25/- under the head, legal liability towards the employee/driver. Admittedly, it is a Tractor, The policy is in respect of an engine of a Tractor which has got only one seating capacity which is provided for driving the Tractor. In other words, when seating capacity of the Tractor engine is only one and the liability is in respect of the driver, we are of the opinion driver was not justified in fixing the liability on the Insurance Company.

11. In the circumstances, we are of the view that the appeal has to be allowed by holding that the policy issued by the Appellant does not cover the risk of an employee who was sitting on the engine of the Tractor and risk covers only the driver.

12. In the result, the appeal is allowed. The judgment and award passed by the MACT, Bangalore on 19th April 2006 In MVC No. 6666/04 is hereby modified holding that the Appellant - Insurance Company is not liable to satisfy the award. It is open for the Respondents to proceed against the owner and driver of the

vehicle.

The amount, If any, in deposit is ordered to be transmitted to the Appellant-Insurance Company.