

(2016) 03 KAR CK 0065

In the Karnataka High Court

Case No : MFA Nos. 20150, 20149/2008 and 20151/2008 (WC)

The Divisional Manager, Divisional Office, United India
Insurance Co. Ltd.

APPELLANT

Vs

Santosh Shivappa Kudari and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 4(1(c)(ii)

Citation : (2016) 03 KAR CK 0065

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Laxman B. Mannoddar, Advocate, for the Appellant; R.D. Desai,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The United India Insurance Company Limited filed these appeals challenging the legality and correctness of the judgment and order dated 29-5-2008 made in WC/NF/157 & 158/2005 and WC/NF/188/2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Bagalkot (hereinafter referred to as "the WCC for short) fastening the liability on the appellant to compensate the claimants.

2. All these appeals are arising out of the common judgment and order passed by the WCC in the very same accident. In view of that, all these appeals are clubbed together and disposed of by this judgment and order.

3. The claimant in WC/NF/157/2008 is the driver and claimants in WC/NF/158/2008 and WC/NF/188/2008 were coolies working in the Tractor and Trailer bearing registration No. KA-29/T-1629-30 belonging to the second respondent herein. As per the instructions of owner of the vehicle, on 26-9-2005, while they were proceeding towards the land of owner in the Tractor and Trailer, the trailer tyre was punctured on the way. While removing the tyre of the trailer,

for technical defect, the tractor turned turtle. Due to the impact, the claimants have sustained grievous injuries. Initially they had taken treatment at Dr. Ramesh Patil Hospital at Mudhol. Thereafter they had taken treatment at Private Hospitals. In the accident, the driver has sustained fracture of radius of right hand and fracture of patella and other injuries to the body. The claimant in WC/NF/158/2005 sustained fracture of tibia and fibula, fracture of clavicle and other injuries. The claimant in WC/NF/188/2008 sustained fracture of femur and fracture of hip-bone. In view of the injuries sustained, they cannot do the work of driver and coolies, which they were doing prior to the accident. The owner of the vehicle was paying them salary of Rs. 4,000/- p.m. The accident occurred during the course and out of employment. Hence, the claimants are entitled for compensation.

4. Though the owner of the vehicle was served with notice, he remained unrepresented. The second respondent Insurance Company filed written statement denying the entire averments made in the claim petitions and also disputed the relationship of master and servant between the claimants and owner of the vehicle. As on the date of accident, driver of the Tractor and Trailer did not possess valid and effective driving license. Further the insurance policy covers risk of the driver and does not cover the risk of coolies travelling in the tractor. Further, two coolies were sitting on the mudguard of the tractor. Hence, they are not entitled for compensation. A false case has been set up in order to claim compensation from the Insurance Company and sought for dismissal of the claim petitions.

5. On the basis of pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their case examined themselves as P.W.1, P.W.3 and P.W.4 and the doctor who has treated the claimants and issued disability certificate was examined as P.W.2 and got marked the documents as Ex. P1 to Ex. P15. On behalf of the respondents, none of the witnesses were examined. However, the insurance policy of the Tractor and Trailer was marked as Ex. R2-1.

6. The WCC after appreciating the oral and documentary evidence let in by the parties, taking into consideration the MVI report, spot panchanama, copy of the complaint and charge sheet held that the claimants have sustained injuries in the road traffic accident occurred on 26-09-2005 during the course and out of employment. Hence, they are entitled for compensation. Since the vehicle is covered by insurance policy and driver of the Tractor and Trailer was having valid driving license, the liability was fastened on the Insurance Company to compensate the claimants. The doctor who has treated the claimants had assessed the disability taking into consideration the fractures they had sustained. Since the injuries suffered are not scheduled injuries as provided under Section 4(1)(c)(ii), the doctor had assessed the disability to an extent of 50% insofar as driver is concerned, 60% in respect of claimant in WC/NF/158/2008 and 40% in respect of the claimant in WC/NF/188/2008. Taking the income of driver as Rs. 3,400/- p.m., taking 60% thereof, considering the disability to an extent of 50%

and applying the relevant factor 221.37, since the driver is aged about 22 years, the WCC awarded a sum of Rs. 2,25,797/- insofar as driver is concerned. Taking income of Rs. 3,000/- p.m., for the coolies, taking 60% thereof, considering the disability to an extent of 60% and 40% respectively, applying the relevant factors 225.22, the WCC awarded a sum of Rs. 2,43,237/- and 1,62,158/- with interest at 12% p.a. in respect of claimants in WC/NF/158/2005 and WC/NF/188/2005 are concerned. The Insurance Company being aggrieved by the judgment and order passed by the WCC fastening the liability on them to compensate the claimants, filed these appeals.

7. Sri. Laxman B. Mannoddar, learned counsel appearing for the appellant-Insurance Company contended that the judgment and order passed by the WCC is contrary to law. The complaint lodged before the jurisdictional police as per Ex. P1 and Ex. P2 by one of the injured person, clearly disclose that on 26-09-2005 after loading the sand, while they were proceeding towards the land of owner of the vehicle, the tyre of trailer got punctured. In order to bring the tyre, the two cleaners proceeded in the tractor sitting on the mudguard towards the house of owner of the vehicle. After taking tyre and proceeding towards the land, the tractor turned turtle due to technical defect and two coolies sitting on the mudguard of the tractor fell down and sustained injuries. Hence, the Insurance Company is not liable to compensate the claimants. The seating capacity of the tractor is only one. The insurance policy covers the risk of the driver of the tractor and not the coolies. The WCC without taking into consideration Ex. P1 and Ex. P2, fastened the liability on the appellant and hence sought for setting aside the judgment and order by the dismissing the claim petitions.

8. On the other hand, learned counsel appearing for the first respondent in each of the appeal argued in support of the judgment and order passed by the WCC and contended that the Tractor and Trailer put together becomes a goods vehicle, three coolies travelling in the goods vehicle are also covered by the insurance policy. Hence the appellant is liable to compensate the claimants and sought for dismissal of the appeals.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned judgment and order and other relevant records.

10. The records clearly disclose that claimants are the driver and coolies working in a Tractor and Trailer. There is no dispute that they have sustained injuries in the road traffic accident occurred on 26-09-2005. The main contention of the appellant is that as on the date of accident, the claimants in WC/NF/158/2005 and WC/NF/188/2005 were travelling on the mudguard of the tractor. The coolies travelling in the tractor are not covered by the insurance policy. As on the date of accident, the trailer was not attached to the tractor. Ex. P1 and Ex. P2 clearly disclose that after loading the sand, while they were proceeding towards the field of owner of the vehicle, tyre of the trailer got punctured. In order to bring the tyre for the trailer, the trailer was detached from the tractor and taken the tractor

to bring the tyre. While bringing the tyre, the tractor turned turtle on account of technical defect. The two coolies sitting on the mudguard of the tractor and the driver of the tractor sustained grievous injuries on Hebbala-Kanasageri road. Ramesh Teli who is the complainant and one of the persons travelling in the Tractor and Trailer also made a statement before the police to the same effect that while they were bringing the tyre, the tractor turned turtle. At the time of accident, the trailer was not attached to the tractor. Hence, it is clear that two coolies were sitting on the mudguard as the tractor is having only one seat. The contention of the appellant is that the insurance policy of the tractor does not cover the risk of coolies travelling in the tractor. Ex. P1 and Ex. P2 clearly disclose that the coolies were travelling in the tractor. The Insurance Company is not liable to compensate the claimants who were sitting on the mudguard. The WCC, without appreciating Ex. P1 and Ex. P2 held that the coolies were working in the Tractor and Trailer; they have sustained injuries in the road traffic accident and they are entitled for the compensation. The WCC has lost sight of Ex. P1 and Ex. P2. The panchanama, clearly disclose that the tractor turned turtle on Hebbala-Kanasageri road on the property of Ningappa Agasar. The trailer was not attached the tractor at the time of accident. This Court in a judgment reported in , 2006 ACJ 671 in the case of NATIONAL INSURANCE COMPANY LIMITED v. BRAMARANBIKE AND OTHERS clearly held as under:

"The provisions of regulation 28 in Appendix 2 pertaining to the Rules of the Road Regulations, 1989, formulated under Motor Vehicles Act, categorically declares that the driver when driving a tractor shall not carry or allow any person to be carried on the mudguard of a tractor. The effect of the regulation makes any person travelling in a tractor apart from the driver as illegal and would be an unauthorised passenger. The policy of insurance issued does not cover the risk of an inmate of the tractor. The permitted seating capacity for the tractor is only that of a driver and no other person. In the instant case, the vehicle being only a tractor at the time of accident, there is no legal possibility of coverage of the risk of an inmate of a tractor. In that view of the matter, the award passed by the Tribunal against the insurer is illegal."

11. In the instant case Ex. P1 and Ex. P2 clearly prove beyond doubt that two coolies were travelling sitting on the mudguard of the tractor in the absence of trailer. Hence, two coolies working in the tractor are not entitled for compensation from the Insurance Company. The owner of vehicle has also not disputed the claim of two coolies working in the tractor. It is open to the claimants in WC/NF/158/2008 and WC/NF/158/2008 to press their claim as against the owner of the vehicle. Insofar as claim of the claimant in WC/NF/157/2005 is concerned, he was working as a driver in the tractor and the insurance policy covers the risk of the driver. Hence, the Insurance Company has to compensate the claimant in WC/NF/157/2008. In view of the above finding, MFA No. 20149/2008 filed by the Insurance Company is liable to be dismissed and MFA Nos. 20150/2008 and 20151/2008 are to be allowed and the judgment and order passed by the WCC is required to be modified exonerating the

appellant from their liability of paying compensation to two coolies. Accordingly, I pass the following:

ORDER

MFA No. 20149/2008 is dismissed. MFA Nos. 20150/2008 and 20151/2008 are allowed and the judgment and order dated 29-05-2008 passed by the WCC is modified and the appellant-Insurance Company is exonerated from their liability to compensate the claimants in WC/NF/158/2008 and WC/F/188/2008.

Amount in deposit in MFA No. 20149/2008 is directed to be transferred to Civil Judge (Sr.Dn.), Bagalkot for disbursement.

The amount in deposit in MFA Nos. 20150 and 20151 of 2008 is directed to be refunded to the appellant-Insurance Company.