

(2006) 11 KAR CK 0071

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3148 of 2004

The New India Assurance Co. Limited

APPELLANT

Vs

R. Thippeswamy and Others

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147 (1), 147 (2), 166

Citation : (2007) 1 KCCR 736

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : R. Rajagopalan, for the Appellant; B.M. Siddappa, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is preferred by the insurance company challenging the award of the Tribunal where under the liability to pay the compensation has been foisted on them.

2. The facts in brief which led to this appeal are as under:

R. Thippeswamy, the claimant was working as a cleaner in the passenger bus bearing registration No. KA16 A8889 owned by the third Respondent, Smt Geetha. On 14.6.2000 in the course of his employment as a cleaner, he got down from the bus and was regulating the movement of the people in front of the bus. At that time the driver of the bus suddenly moved the bus resulting in running of the left front wheel of the bus over the right foot of the claimant. Therefore, he preferred the claim petition u/s 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs. 3,60,000/-. To the said claim petition he made the owner and the driver of the bus and the insurance company which had insured the bus as party Respondents. The owner and the driver did not contest the matter. They were placed ex-parte. Therefore, the insurance company filed a detailed written statement contesting the claim on all grounds. However, they did not dispute the

insurance coverage to the said bus. In view of the aforesaid pleadings, the Tribunal framed the following issues:

1. Whether the Petitioner proves the road traffic accident that took place at private bus stand, Chitradurga, at about 11.50 am on 14.6.2000, was due to rash and negligent driving of the bus bearing registration No. KA16 A8889, by its driver ?

2. Whether the Petitioner proves that he sustained injuries in the accident, and he is entitled to compensation from Respondents?

3. To what order ?

3. The claimant examined himself as PW 1 and examined the doctor by name Sri Shivanna Reddy as PW 2 and produced 8 documents which are marked as Exs. P1 to P8. On behalf of the Respondents Sri Shanthi Prakash, an officer of the insurance company was examined as RW-1 and through him the insurance policy was marked as Ext. R-1.

4. The tribunal on consideration of the aforesaid material held that the accident was on account of rash and negligent driving by the driver of the bus in which the claimant sustained injuries and therefore the claimant has established actionable negligence and is entitled to compensation. Thereafter it looked into the evidence of PW-1 the claimant, P.W-2 the doctor and the medical records and has awarded a sum of Rs. 1,05,000/- as global compensation with interest at 6% p.a., from the date of petition till the date of payment. Aggrieved by the said award of the tribunal dated 16.1.2004 the insurance company is in appeal challenging the liability to pay the aforesaid amount awarded.

5. Learned Counsel appearing for the Appellant contended that it is undisputed from the material on record that the claimant was working as a cleaner in the bus involved in the accident. He was outside the bus at the time of accident regulating the passengers. At that point of time the driver by his negligent act drove the bus resulting in the bus running over the right leg of the first Respondent. Therefore he submits that the claimant was an employee of the insured and that the accident took place in the course of his employment and as he is not one of the categories of employees to whom risk is covered statutorily under the proviso (ii) of Sub-section (1) of Section 147 of the Act, the insurance company is not liable to indemnify the insured in so far as compensation payable to the claimant is concerned. Therefore he submits the award of the tribunal in so far as foisting the liability on the insurance company is liable to be set aside. However, the insurance company did not challenge the quantum of compensation.

6. Per contra, learned Counsel appearing for the claimant submitted, though the claimant was an employee of the insured and in the course of employment the accident took place, at the time of accident he was not inside the bus, he was outside the bus regulating the passengers and therefore in law, he would be a third party and as third party he is entitled to compensation being paid by the

insurance company.

7. In view of the aforesaid submissions the point that arise for my consideration in this appeal is as under:

Whether an employee, like a cleaner, whose risk is not statutorily covered under proviso (ii) Sub-section (1) of Section 147 of the Motor Vehicles Act, 1988, is entitled to compensation, as a third party, if at the time of the accident he was outside the vehicle ?

8. The entire argument of the learned Counsel for the Appellant rests on the proviso to Section 147(1) of the Act. Section 147 of the Act deals with requirements of policies and limits of liability. If a policy of insurance is issued by a person who is an authorised insurer and insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him in respect of the death or of bodily injury to any person including owner of the goods or his authorised representative carried in the vehicles or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place, the risk of the aforesaid persons is covered in terms of the contract entered into between the insured and the insurer. Once such a policy is issued, proviso to the aforesaid section makes it clear that the policy shall not be required to cover the liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act in respect of the death of, or bodily injury to, any such employee engaged in driving the vehicle, or if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or if it is a goods carriage being carried in the vehicle. Therefore once a policy is taken by the insured, statutorily his or her employees referred to above are also covered. However other categories of employees are not covered.

9. A Division Bench of this Court in the Case of Divisional Controller, NEKRTC v. Sangamma and Ors. II (2005) ACC 438 at para - 8 has held as under:

If a workman suffers a personal injury unexpectedly or suddenly and such personal injury suffered by the workman can be attributed to the work undertaken by the workman or has some connection to the nature of the duties discharged by a workman, such an injury suffered can be treated as a result of the accident arising out of and in the course of the employment. Workmen's Compensation Act is a beneficial legislation intended to give some security to the workman. The provisions of the Act is in the nature of a "Mini Insurance Scheme" to the workmen. Therefore the liability of the employer under the Act is conceptually quite different from the liability under tort. Therefore the

interpretation to the provisions of the Act calls for a broad and liberal construction, lest its evident object is defeated.

After so holding, in that particular case, the workman who was travelling in a bus and who was working as a conductor suffered a heart attack the question was how is the employer responsible to pay compensation. In that context it was held, having regard to the beneficial intention behind the legislation as the conductor had heart attack while travelling in the bus it was in the course of employment and therefore the employer was held liable and consequently the insurance company was made to pay compensation.

10. In the case of Premila and Others Vs. Shaliwan and Another, the driver of a motor vehicle had stopped the vehicle temporarily en route for attending to call of nature and when he was hit by a truck resulting in his death. In that context it was held temporary stoppage of vehicle and driver getting out of vehicle for bona fide reason does not result in suspension/cessation of legal contract of driving of vehicle. Therefore the insurance company was held liable to pay compensation due to him under the provisions of Workmen's Compensation Act 1923.

11. In the case of The Branch Manager, New India Assurance Company Limited Vs. Siddappa and Others, it was held while interpreting Section 3 of the Act that, to come within the purview of Section 3 of the Act it is not necessary that the workman must be actually working at the time of the injury or the accident. Therefore, there should be three factors, namely, that there must be injury which must be caused in an accident, it must be caused in the course of and out of the employment must be established and such accident was caused in the course of and out of employment.

12. All these cases arise under the provisions of the Workmen's Compensation Act. Therefore the principle laid down therein though could be looked into, they have not application to a claim arising under Motor Vehicles Act.

13. The Supreme Court in the case of Rita Devi and Ors. v. New India Assurance Co. Ltd. (2000 ACJ 901) while considering the claim arising out of murder of a person who was a passenger in a hired autorickshaw, held, though the tribunal constituted under Motor Vehicles Act has held that death was caused by an accident coming within the purview of Motor Vehicles Act and allowed compensation against the owner and insurer of the vehicle, the High Court had reversed the said judgment holding that in case of murder, it would be a case of death in a motor accident. Before the Apex Court the contention was that death was caused by felonious act of certain unknown persons and is not caused by an accident arising out of the use of the vehicle and no proximity could be presumed between the murder and stealing of autorickshaw. Negating the said contention the Apex Court held the driver was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. However, passengers committed an act of felony of stealing the autorickshaw and they eliminated the driver. Therefore the murder was due to the accident arising

out of use of motor vehicle and the claimants are entitled to compensation. As the death was accidentally caused in the process of committing theft it falls within the four corners of the Motor Vehicles Act and the owner and insurer are liable to pay compensation to the claimants.

14. A Division Bench of this Court in the Case of *Narasamma and Others Vs. M. Saibaba and Another*, was dealing with a case of a passenger who had just alighted from a goods vehicle when the driver without giving sufficient time to get clear of the vehicle moved the truck and the rear wheels of the truck ran over the passenger resulting in his death, held that the deceased was a third party when the accident occurred. The passenger had severed his connection with the vehicle and therefore he was a third party when the accident occurred. As such the insurance company is liable to pay compensation and indemnified the insured. Even the Bombay High Court in the case of *Oriental Insurance Co. Ltd. and Another Vs. Edward D'Cruz and Others*, dealing with a similar case held that the contract of carriage of passenger had come to an end, hire charges stand exhausted on arrival at the destination and therefore the deceased was a third party and the liability of the insurance company was limited to the extent of Rs. 50,000/.

15. In the case of *Oriental General Insurance Co. Vs. Rukmini Bai*, dealing with a case where claimant had already alighted from the bus and she had ceased to be a passenger and, therefore, in relation to the accident, she was a third party and consequently, the liability of the insurance company exists to pay the entire compensation awarded, held if really the claimant had already alighted from the bus and thereafter the accident had occurred, the contention urged by them would have been unexceptionable. But the pleadings and the evidence in the said case established that when the claimant was in the process of alighting from the bus, on account of the bus having been moved by the driver, she fell down and was hit by the mudguard of the bus, and thereby she sustained injuries. In view of the proviso (ii) below Section 95(1) a person in the process of alighting from a passenger vehicle is a passenger and, therefore, in the said case it was held that the claimant had ceased to be a passenger and had become a third party.

16. From the aforesaid judgments it is clear, if the injured is an employee and in the course of his employment if he is injured, whether he is inside the bus or outside the bus, under the provisions of the Workmen's Compensation Act he is entitled to compensation. Thus, to be entitled to compensation what has to be established is that the injured was an employee of the insured, he was injured in the course of employment and then he is entitled to compensation. But that is not the position in respect of cases arising out of Motor Vehicles Act of 1988. For being entitled to compensation under the Act, the claim for compensation should arise in respect of accidents involving the death of or bodily injury to persons arising out of the user of the motor vehicles. The relationship of master and servant is not necessary. If such a relationship exists it enures to the benefit of an employee to a limited extent as provided under proviso (ii) to Sub-section (1)

of Section 147 i.e., if the insured had taken a policy covering only third party risk, even then the driver of the vehicle which is insured and if it is a public service vehicle the employee engaged as a conductor of the vehicle or employee employed in examining the tickets on the vehicle and if it is a goods carriage employee being carried in the vehicle are also entitled to compensation to the extent it is provided under the provisions of Workmen's Compensation Act even though the insured had not paid any additional premium. However, the said benefit is not available to other categories of employees of the insured. But if other categories of employees at the time of accident though in the course of employment are outside the vehicle, then they would become "third party" under the Act, notwithstanding the fact that such a person is also an employee of the insured. Such an employee has the option of either claiming compensation under the provisions of Motor Vehicles Act as a third party or as an employee of the insured under the provisions of Workmen's Compensation Act. If the claim is under the provisions of Workmen's Compensation Act, the liability of the insurance company will be only to that extent as provided under the Workmen's Compensation Act. If the claim is under the provisions of Motor Vehicles Act, as a third party, then the liability would be unlimited as provided u/s 147(2) of the Act. It is to be remembered that both the Workmen's Compensation Act and the Motor Vehicles Act are beneficial legislation which are enacted to protect the interest of victims to the accident either in the course of employment or on account of use of motor vehicle. Any interpretation to be placed on these provisions should be in consonance with the object with which these enactments are enacted. Any other view would defeat the very purpose of the Act. If the victim of an accident is entitled to compensation under both the aforesaid enactments, then that enactment which is more beneficial to him is to be adopted. In those circumstances, I am of the view that there is no substance in the contention of the Appellant that the tribunal had wrongly foisted the liability on them. In that view of the matter, I do not find any merit in this appeal. Hence I pass the following order.

Accordingly, the appeal is dismissed.

High Court office is directed to transmit the amount deposited by the Appellant at the time of preferring the appeal to the tribunal for being paid to the claimant.