

(2007) 04 KAR CK 0010
In the Karnataka High Court
Case No : MFA No. 6445 of 2004

The New India Assurance Co. Ltd.

APPELLANT

Vs

K.S. Puttappa and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2008) ACJ 2705 : (2008) 116 FLR 39 : (2007) ILR (Kar) 2817 : (2007) 6 KarLJ 299 : (2007) 3 KCCR 202 SN

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : K. Suryanarayana Rao, for the Appellant; S.V. Prakash, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—A person appointed as a cleaner, drives the vehicle and the accident occurred. Whether the said accident and consequent injury or death can be said to be come within the purview of expressions "accident arising out of and in the course of employment?" is the question that requires to be answered in this appeal.

2. Learned Counsel for the appellant Insurance Company Sri K. Suryanarayana Rao submitted that the admitted facts are to the effect that deceased Nagesh was a cleaner under the tractor and trailer owner and on the date of the accident i.e., on 8-2-1997 the deceased was found driving the tractor KA 141083 and the accident occurred leading to Nagesh succumbed to the injuries. The claim application filed by the parents came to be allowed by the Commissioner for Workmen's awarding a sum of Rs. 1,67,032/- with 12% interest and the liability was put on the appellant who is the insurer in respect of the tractor-trailer KA 14 1803.

3. The grievance of the appellant-Insurance Company is that the deceased was not found to have been on duty as a "Driver" at the time of the accident and

therefore, the question of liability will not arise because the accident did not arise out of and in the course of the employment of the deceased as a "Cleaner".

4. Learned Counsel for the respondent/claimant on the other hand, contended that the deceased was engaged by the insured to work as a cleaner and in the course of his employment the deceased also used to drive the tractor and as such the accident will have to be construed as having occurred during the course of the employment and as such the liability put on the appellant cannot be avoided.

5. In support of this submission, Learned Counsel for the claimant drew my attention to item No. XLVI of Schedule-2 to the W.C. Act 1923 (Act in short).

6. In view of the submission made as above, the point that arise for consideration : "whether in the light of the facts and circumstances of this Case, it can be said that the accident in question arose out of and in the course of employment?"

7. The admitted facts are that the deceased Nagesh was employed as a "Cleaner" under the owner of the tractor. On the date of the accident, said Nagesh was driving the tractor and tractor turtle leading to Nagesh succumbed to the injuries. In the light of the above undisputed facts which gets supports from both the pleadings as well as evidence placed by the claimants before the W.C. Commissioner, whether it can be said that the accident was one that arose out of employment and in the course of Employment so as to make the Insurance Company liable. My positive answer to the said question is in the negative.

8. The reason for the said answer is that the deceased was engaged to work as a cleaner but not as a driver by the insured. Therefore, at the time of the accident, since the deceased was found driving the tractor in question, he was not on duty as a driver but he was supposed to be the cleaner of the tractor. Therefore, the driving of the tractor by a cleaner cannot be brought within the fold of accident arising out of and in the course of employment.

9. As far as item No. XLVI of the schedule-II referred to by the Learned Counsel for the claimant is concerned, the said clause reads thus:

XLVI Employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like;

10. Referring to the above description Learned Counsel for the claimants contended that use of words "and the like" should be construed as to mean that a person employed as a cleaner can also drive the tractor. In other words, employment in capacity of a cleaner should be construed as a driver also. I am unable to agree with the said contention put forward by the Learned Counsel for the claimants. In my view, expressions "and the like" refers to type of vehicles mentioned in the said item. In other words it refers to vehicle of the type like, bulldozers, tractors, power tillers and so on and so forth. Therefore, the said expression cannot be construed as to mean that a person employed as a cleaner

has to be treated as a person employed as a driver. No such inference can be drawn from the use of the words "and the like" in the above item of schedule-II of the Act.

11. In view of the above reasoning I am of the view that the Commissioner for Workmen's was in error in treating the accident as one arising out and in the course of employment and he lost sight of the fact that it was not the duty of the deceased Nagesh to drive the tractor. But on the other hand, he was only supposed to do the work of a cleaner and nothing else. As such the order of the W.C. Commissioner putting the liability on the Insurance Company cannot be sustained in law and consequently the said portion of the order is set aside and the liability will be on the owner of the tractor to pay compensation to the claimants.

In the result the appeal is allowed and the amount in deposit shall be refunded to the appellant.