
(2011) 04 KAR CK 0168
In the Karnataka High Court
Case No : M.F.A. No. 5053 of 2003

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Nirmalamma and Others

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147

Citation : (2011) 04 KAR CK 0168

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : P.B. Raju, for the Appellant; B.M. Siddappa, for R2-5 in M.F.A. No. 5053/2003 and for R1 in M.F.A. No. 5051/2003, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana

1. The 2nd respondent insurance company in CR. Nos. 119 and 133/1998 on the file of Commissioner for Workmen's Compensation, Chitradurga has come up in these two appeals challenging the common order dated 24.5.2003 passed in the aforesaid proceedings.

2. Brief facts leading to these appeals are:

CR. No. 119/98 is filed by the widow and minor daughter of deceased Jagadeesh and CR. No. 133/98 is filed by the widow and children of deceased Govindaraju. The case of claimants is that deceased Jagadeesh and Govindaraju were working as coolies under 1st respondent owner of tractor trailer bearing Engine No. 352:4049, 3522, Chassis No. KTC/8:97 No. 313 insured with- 2nd respondent/ insurance company. On 5.9.1997 the deceased in the course of their employment under 1st respondent were travelling in the said vehicle to bring fertilizer from Chitradurga to Lakshmi sagar. The said tractor trailer met with an accident resulting in the death of Jagadeesh and Govindaraju Hence, their legal heirs filed claim petitions before the Commissioner for Workmen's Compensation,

Chitradurga.

3. In the said proceedings, based on the pleadings issues were framed. In all nine witnesses were examined as PWs. 1 to 9 and several documents were produced by both parties. The Commissioner on appreciation of the pleadings, oral and documentary evidence available on record accepted that there exist relationship of employer and employee between deceased Jagadeesh, Govindaraju and 1st respondent. It was also held that the accident has taken place in the course of their employment with 1st respondent and the death caused to them is directly attributable to their employment with 1st respondent in the use of aforesaid tractor trailer. Accordingly, compensation was awarded to claimants in both the claim petitions.

4. The 2nd respondent Insurance Company being aggrieved by the same has come up in these appeals on the ground that there is no relationship of employer and employee between the deceased persons and 1st respondent. It is only the tractor belonging to 1st respondent was insured and trailer was not insured. Further, the tractor was also not having permanent registration number and the temporary registration number granted had expired as on the date of accident. At the relevant time the said tractor trailer was used by 1st respondent Revanna for a family function in his name. Though deceased Jagadeesh is son of 1st respondent, owner of tractor trailer, the same is suppressed. So far as deceased Govindaraju though he was a barber by profession, he is wrongly shown as coolie. The fact that he was traveling in the said tractor for the purpose of tonsuring the head of 1st respondent's grand son, is suppressed and he is shown as coolie and his claim for compensation as employee of 1st respondent is allowed.

5. On appreciation of the grounds of appeals and the finding of Commissioner in the common order impugned in these appeals, this court framed the following common substantial question of law as arising for consideration in these two appeals.

Whether there is perversity on the part of the Commissioner for Workmen's Compensation in accepting the relationship of employer and employee between the claimants and 1st respondent ?

6. Heard the counsel for appellant and respondents. Perused the pleadings, oral and documentary evidence available on record in the light of grounds of appeals and findings of Commissioner in the common impugned order. On re appreciation of the same this court answer the aforesaid substantial question of law in the affirmative for the following:

REASONS

7. The fact that 1st respondent is owner of tractor trailer issued with Chassis No. 03103 Engine No. 352-4049 HMT 3522 bearing registration No. KA- 17/TR/46/97-98 and the said vehicle is insured with 2nd respondent is not in

dispute. It is further not in dispute that said vehicle met with an accident on 5.9.1997 at..about 8.30 pm. However the point that is in dispute is relationship of persons who have died in the said accident with the owner of aforesaid tractor namely 1st respondent. From the records it is seen that deceased Jagadeesh and another Manjanna are the sons of 1st respondent, Revanna who is also owner of tractor trailer.

8. The documents available on record discloses that on 5.9.1997 there was a function in the house of Revanna which is tonsuring ceremony of his grand son i.e., his son Manjanna's child. For that purpose, the entire family along with friends and relatives with a barber who was required to perform tonsure had gone to temple near Beeravara village. While coming back it is seen that said vehicle met with an accident resulting in the death of Govindaraju. barber who accompanied them for the purpose of tonsuring the head of child for whose tonsuring ceremony all the entourage had gone. In the said accident, 1st respondent Revanna's another son Jagadeesh has also died. In addition to the deceased, there were 20 other persons traveling in the said tractor trailer as could be seen from the FIR and also the statement recorded by police at the time of recording FIR and drawing spot mahazar which shows that nearly 16 to 18 persons have given their statement stating that at the time of accident, they were traveling along with deceased in the aforesaid tractor.

9. The reading of said statements clearly discloses that though all of them admit that they were traveling in the said tractor trailer after conclusion of the function held in the temple near Beeravara village they try to include that said vehicle in which they were traveling was carrying manure belonging to 1st respondent Revanna. They also state that along with said goods they were traveling in tractor trailer, which is not acceptable. When there is function in the family of Revanna, the..owner of tractor trailer to say that his son was working as coolie at the relevant point of time and the presence of Govindaraju who had travelled along with the group for the purpose of tonsuring, to be considered as coolie for the purpose of this case, cannot be accepted.

10. Even otherwise as on the date when the accident took place it is only tractor, which was insured and trailer was not insured. In this behalf 2nd respondent relied upon the decision of division bench of this court in the matter of the. Oriental Insurance Co. Ltd., -vs- D. Laxman and Ors., ILR 2005 KAR 4355, wherein it is held as under:

(B) Motor Vehicles Act, 1988 -Section 146 and 147 - Requirement of policies and limits of liability under - Accident -Death and injury-Trailer attached to tractor not covered by insurance policy - Whether the insurance company can be made liable to pay the compensation in respect of coolies carried in a vehicle - Held, Under the provisions of the Motor Vehicles Act, both the Tractor and the Trailer requires to be registered separately - In order to claim compensation under the provisions of the Motor Vehicles Act and also under the provisions of Workmen's Compensation Act, the trailer is also requires to be insured as required u/s 146

of the Act - Therefore, that the coolies carried in a trailer which is not covered by a insurance policy, the insurance company is not liable to pay any compensation.

11. In the light of aforesaid judgment and admission of parties it is clearly seen that at the first place there is no relationship of employer and employee between deceased and 1st respondent. Even assuming that there was employer and employee relationship in the absence of trailer being insured along with tractor fastening of liability on insurance company for the risk arising due to death or injuries of persons carried in the trailer cannot be fastened on insure of tractor. As contemplated u/s 147 of the Motor Vehicles Act, award of compensation on the ground of there being relationship of employer and employee does not arise for consideration. In the instant case in the absence of both aspects, this court hold that there is error on the part of Commissioner in accepting that there exist relationship of employer and employee between deceased and 1st respondent Revanna. That, the insurance company is liable to pay compensation to the legal heirs of deceased persons, who are carried in the trailer for which there is no coverage of insurance.

12. Accordingly, both the appeals filed by insurance company are allowed. The common order dated 24.5.2003 passed in CR. NOs. 119 and 133/98 is set aside, so far as fastening the liability on the Insurance Company to pay the compensation. In view of the appeals being allowed, the common impugned order is set aside, the amount in deposit in each of the appeals be refunded to the appellant/insurance company.