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(2010) 09 KAR CK 0117

In the Karnataka High Court

Case No : M.F.A. No. 6290 of 2006

The New India Assurance Co. Ltd.	APPELLANT
Vs	
Venkateshappa and Others	RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2012) ACJ 167 : (2012) 4 TAC 339 : (2012) 2 TAC 667

Hon'ble Judges : S.N. Satyanarayana, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : A.K. Bhat, for the Appellant; B. Veerappa and Assts., for R2, for the Respondent

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the Commissioner for Workmen''s Compensation, Kolar dt. 24.12.2005 passed in W.C.A.F.C. No. 31/2003 is called in question by the Appellant.

2. The facts leading to this case are as hereunder:

The claimants are the L Rs. of one deceased Nagesh who was working as a cleaner in the vehicle of the 1st Respondent - Venkateshappa, namely, Tractor and Trailor No. KA-07-T-3455 and KA-07-T-3458, which vehicle met with an accident on 23.4.2003. According to the claimants, the deceased was working as a cleaner-cum-loader in the Tractor of the 1st Respondent and during the course of employment on 23.4.2003 on account of the accident occurred to the Tractor, he died. Therefore, the claimants lodged the claim petition.

3. According to the claimants, deceased was aged about 26 years and was getting an income of Rs. 4,000/-and batta of Rs. 20/- per day. The owner of the vehicle admitted the relationship of employer and employee. However, the Insurance Company contended that though the policy has been issued, it is not liable to cover the risk of the deceased. The Commissioner having considered the evidence let in by the parties, came to the conclusion that the deceased was an employee under the 1st Respondent and he died while discharging his duties as a

cleaner-cum-loader and un-loader and that the deceased was getting an income of Rs. 4,000/- per month and ultimately held that the Appellant - Insurance Company is liable to pay the compensation considering the policy issued by the owner of the vehicle. Accordingly, compensation of Rs. 3,28,302/- has been awarded with interest at 12% p.a. to be calculated after 30 days from the date of accident. This judgment and decree is called in question by the Insurance Company.

4. In this appeal, two points are canvassed by the learned Counsel for the Appellant - Insurance Company. According to him, the risk of the deceased was not covered as the Trailer was not insured, only the engine insured and that the risk was in respect of employee and such employee understood as driver of the Tractor and it does not cover the risk of cleaner in the Tractor. According to him, the interest awarded by the Commissioner is on higher side and the same is contrary to the judgment of the Hon''ble Supreme Court.

5. Having heard the counsel for the parties, the following points are to be considered in this appeal:

1) Whether the policy of the Appellant could cover the risk of the deceased, cleaner-cum-loader in the Tractor?

2) Whether the interest awarded is on higher side?

6. The policy is produced before the Court. On perusal of the policy, it is clear that the policy is subject to IMT. Therefore, what is required to be considered by this Court is IMT. IMT reads as hereunder:

IMT.40 - Legal Liability to paid driver and/or Conductor and/or cleaner employed in connection with the operation of Motor vehicle.

(For buses, taxis and motorized three/four wheelers under commercial vehicles tariff)

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify insured against his legal liability under the Workmen''s Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured and will in addition be responsible for all costs and expenses incurred with its written consent.

7. From looking into IMT, the Appellant - Insurance Company is liable to pay the compensation if it is awarded to driver and/or Conductor and/or cleaner employed in connection with the operation of the motor vehicle.

8. In the present case also the vehicle is covered in respect of one employee. Therefore, if the deceased was a cleaner and if the risk of the policy is subject to

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IMT, as the risk of the cleaner would also cover, the Appellant -Insurance Company cannot contend that the risk of the cleaner has not been covered under the policy issued by the Appellant. Accordingly, we answer point-1 against the Appellant in view of the IMT.

9. So far as the point-2 is concerned it is squarely covered by the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr. AIR (2009 SCW 3717) wherein their Lordships held that the claimant is entitled to claim interest at 7 1/2% from the date of the petition till the date of the award and at the rate of 12% from the date of petition till the date of payment. Accordingly, we answer point-2.

10. In the result, compensation awarded by the Commissioner is confirmed. The interest awarded by the Commissioner is modified by holding that the claimants are entitled to claim interest at 7 1/2% from the date of petition till the date of the award and at the rate of 12% from the date of award till the date of payment.

The amount, if any, in deposit is ordered to be sent to the Commissioner.

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