(2012) 11 KAR CK 0028

In the Karnataka High Court

Case No : M.F.A. No. 8026 of 2008 (WC)

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Gangamma and Others RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2012) 11 KAR CK 0028

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : H.S. Lingaraj, M.F.A. No. 8026/2008 WC and M.F.A. No. 8026/2008 WC, for the Appellant; Spoorthy Hegde. N., Advocate for R1 to R4; Sri Patel D. Karegowda, Advocate for R2 to R5 and R5 (a) to R5 (c) M.F.A. No. 8026/2008 (WC) and M.F.A. No. 8026/2008 (WC), for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda

1. Heard Sri H.S. Lingaraj, learned counsel for Insurance Company, Sri Spoorthy Hegde. N., learned counsel for claimants and Sri Patel D. Karegowda, learned counsel for insured. In these two appeals, Insurance Company has raised following substantial question of law:-

"Whether the'''' Tribunal and the Commissioner for Workmen''s Compensation were justified in fastening liability on the Insurance, Company when the vehicle insured was under Kissan Package Policy, subject to terms and conditions read over in the schedule which prohibits user of insured vehicle (tractor-trailer) for the purpose other than agriculture?

2. Sri H.S. Lingaraj, learned counsel for Insurance Company taking me through contents of policy and the terms and conditions of Kissan Package Policy would submit that tractor-trailer (insured vehicle) was being used for transportation of bricks and claimant Dasappa and deceased Rangaswamy were sitting on the load

of bricks. Therefore, Insurance Company is not liable to pay compensation.

3. Sri H.S. Lingaraj, learned counsel for Insurance Company has relied on the judgments of the Supreme Court, reported in 2007 ACJ 1909 (in the case of Oriental Insurance Company Ltd. Vs. Brij Mohan & Others) and United India Insurance Company Limited Vs. Serjerao and Others, .

4. In the judgment reported in 2007 ACJ 1909 (in the case of Orients. Insurance Company Ltd. Vs. Brij Mohan & Others), the Supreme Court has held that persons engaged for loading mud into tractor-trailer to transport the same to brick kiln cannot be held as labourers employed for agricultural purposes. The Supreme Court has held that if tractor-trailer is not used for agricultural purpose, Insurance Company is not liable to pay compensation. The policy would cover the risk of loader of tractor-trailer when it is used for agricultural purpose.

5. In the judgment reported in United India Insurance Company Limited Vs. Serjerao and Others, , the Supreme Court has held that the Tribunal cannot pass interim award on the principle of no fault liability against Insurance Company when Insurance Company has pleaded that it is not liable to pay compensation in respect of persons travelling in trolley.

6. In my considered opinion, what has been held in the aforestated judgments is not applicable to the instant case.

7. From the evidence on record, it is established that deceased Rangaswamy and claimant Dasappa were travelling ''in tractor-trailer (insured vehicle) on the load of bricks. The tractor-trailer was used for the purpose of transporting bricks. As per claimants, bricks were being transported for the use of insured. There is no contra evidence

8. The learned counsel for Insurance Company would submit that legal representatives of deceased insured have admitted that deceased Rangaswamy and claimant Dasappa were not engaged by them as loaders of tractor-trailer (insured vehicle).

9. The learned counsel for claimants would submit that statement made by legal representatives of insured cannot bind claimants. The court has to consider evidence of claimants and documents, which came into existence after the accident.

The statement of objections filed by insured is not decisive on the point. The claimants have produced oral and documentary evidence to prove that deceased Rangaswamy and claimant Dasappa were travelling as loaders of tractor-trailer involved in the accident.

10. It is true that tractor-trailer was used for transporting bricks, however such user of insured vehicle does not necessarily lead to an inference that tractor-trailer was being used for purposes other than agriculture.

11. The Insurance Company has issued policy, copy of which is marked as Ex. R.

1.

12. On careful consideration of the contents of policy, I find that Insurance Company has not stated anything about the restrictions of use. It is not even stated that liability of Insurance Company is subject to terms and conditions contained in the schedule to policy. The Insurance Company in order to avoid claim has to establish that liability under the policy did not extend ''to'' cover the risk of claimants or that insured had committed breach of policy, which would afford a ground for the Insurance Company to avoid its liability.

In the case on hand, none of these ingredients is established by the Insurance Company.

13. In the judgment reported in ILR 2011 KAR 4139 (in the case of National Insurance Company Limited Vs. Sri Maruthi & Others), the Division Bench of this court has held:-

40. The combination of tractor-trailer is nothing short of a goods carriage. Therefore, when once it is held as goods carriage vehicle, by virtue of Section-II-1(1) of fully worded policy and also provisions of Section 147, the claim of the claimants on hand is covered. The claimants in the present case have rightly approached the Workmen''s Commissioner and the Commissioner was justified in holding that the injured claimants were coolies under the owner viz the insured. In the present case, they were carrying stones for constructing a ridge in the land belonging 10 the insured so as to store the water. This is nothing but part and parcel of agricultural operations. The Claimants were neither gratuitous passengers nor persons who were travelling in the tractor-trailer for the purpose other than agricultural operations. Looking to the avocation of the claimants, the computation of the compensation by the Commissioner is just and proper. Viewed from any angle, we do not find any good ground to interfere with the awards of the Commissioner. Therefore the claimants in the present case were rightly held as covered under Ex. R-2 policy.

14. In view of what has been held by the Division Bench judgment of this court, even in the absence of contractual liability, Insurance Company has statutory liability in terms of section 147 of the Motor Vehicles Act though tractor-trailer was insured under Kissan Package Policy. Therefore, above substantial question of law is answered against Insurance Company.

15. In the result, I pass the following:-

ORDER

The appeals are dismissed. The amount deposited by Insurance Company in MFA No. 8026/2008 shall be transferred to the Commissioner for Workmen''s Compensation at Tumkur. The amount deposited by Insurance Company in MFA No. 284/2010 shall be transferred to the Prl. Civil Judge (Sr. Dn.) & Addl. MACT at Tumkur.