
(2013) 11 KAR CK 0206
In the Karnataka High Court
Case No : M.F.A. No. 2567 of 2009

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Jayamma, Kuppe Gowda and Somashekar

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : (2013) 11 KAR CK 0206

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : M. Sowri Raju, for the Appellant; B.M. Shyam Prasad, Advocate for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Insurer is in appeal calling in question order and award passed by Commissioner for Workmen's Compensation, Sub-Division-2, Mandya in WCA/FC/CR-27/2007 dated 20.06.2008 whereunder claim petition filed by legal heirs of deceased workman u/s 10 of Workmen's Compensation Act came to be allowed in part and a compensation of Rs. 3,67,360/- has been awarded by fastening the liability jointly and severally on the owner and insurer and directing the insurer to indemnify the claim. Learned advocates appearing for the parties would fairly submit that appeal had been admitted on 29.11.2012 and by oversight substantial question of law has not been formulated and as such they submitted that substantial question of law may be framed.

2. Having heard the learned advocates appearing for the parties and on perusal of the order and award in question as well as records secured from the Commissioner for Workmen's Compensation, Mandya, I am of the view that following substantial question of law would arise for my consideration:

Whether Commissioner was justified in directing the insurer to indemnify the insured in respect of a claim arising on account of death of workman due to

injuries sustained in the road traffic accident while travelling in the tractor by sitting on the mudguard?

3. It is the contention of Sri. M. Sowri Raju, learned counsel appearing for appellant-insurer that deceased Sri. Puttaswamy was working as a coolie under third respondent in the tractor bearing registration No. KA-42-T-1371 and on 30.10.2006 said vehicle met with an accident on account of which deceased Sri. Puttaswamy sustained grievous injuries and later on succumbed to injuries. He would contend that on a claim petition filed by legal heirs of deceased it came to be allowed in part and compensation has been awarded by directing the appellant-Insurer to indemnify the claim which is not in consonance with the law laid down by this court in number of cases. In support of his submission he has relied upon following Judgments:

1. M.F.A. 4998/2001 disposed of on 08.07.2005 -National Insurance Co. Ltd. v. Bramarambike and others

2. Oriental Insurance Company Ltd. Vs. Smt. Shoba and Others,

4. Per contra, Sri. B.M. Shyam Prasad, learned counsel appearing for respondents 1 and 2 would support the order and award in question and would contend the insurer be directed to pay the amount and to recover the same from third respondent-owner of the offending vehicle.

RE: SUBSTANTIAL QUESTION OF LAW:

5. Having heard the learned advocates appearing for the parties and on perusal of the records it would clearly indicate that in the road traffic accident that occurred on 30.10.2006 deceased Sri. Puttaswamy who was an employee under third respondent sustained injuries in the said accident in the course of his employment and succumbed to the said injuries which arose out of such employment. Issuance of policy to the offending vehicle and same being in vogue as on date of accident are undisputed facts and as such they are not delved upon in this appeal as it would be repetition.

6. Records would also indicate that at the time of accident deceased-workman was sitting on the mudguard of the tractor and travelling. Said vehicle met with an accident and sustained grievous injuries. FIR which came to be produced and marked as Exhibit P-1 would also indicate that deceased-workman was travelling in the said tractor sitting along with the driver. The eye witness to the accident Sri Papanna who has been examined before Workmen's Compensation Commissioner has categorically admitted deceased Sri. Puttaswamy (workman) was sitting next to the driver of tractor and while so proceeding it was hit by a KSRTC bus bearing registration No. KA-01-F-7468 and on account of said impact deceased Sri. Puttaswamy sustained grievous injuries. This evidence available on record would clearly indicate that deceased Sri. Puttaswamy was travelling in the tractor. Even in the claim petition at paragraph 3 the claimants have admitted that deceased Sri. Puttaswamy was travelling in the tractor belonging to third

respondent herein at the time of accident. Pleadings and evidence would clearly point to the fact that deceased Sri. Puttaswamy was travelling in the tractor and policy issued in respect of offending tractor would also clearly indicate that only legal liability towards the employee-driver is covered under the policy. It is also not in dispute that offending tractor has got only one seating capacity namely that of the driver and as such policy issued would clearly indicate that the liability covered is in respect of the driver of the tractor and as such Commissioner was not justified in fastening the liability on the insurance company by directing it to indemnify the claim. Infact Division Bench of this court in the case of Oriental Insurance Company Ltd. Vs. Smt. Shoba and Others, has in identical circumstances negated the contention of claimant-workman and absolved the insurer of its liability. It has been held as under:

10. We have perused the policy issued by the appellant. The appellant-Company has collected a sum of Rs. 25/- under the head, legal liability towards the employee/driver. Admittedly, it is a Tractor. The policy is in respect of an engine of a Tractor which has got only one seating capacity which is provided for driving the Tractor. In other words, when seating capacity of the Tractor engine is only one and the liability is in respect of the driver, we are of the opinion driver was not justified in fixing the liability on the Insurance Company.

11. In the circumstances, we are of the view that the appeal has to be allowed by holding that the policy issued by the appellant does not cover the risk of an employee who was sitting on the engine of the Tractor and risk covers only the driver.

7. Said issue being no more res integra and facts on hand being squarely covered by Judgment of Division Bench of this court, I am of the considered view substantial question of law formulated herein above deserves to be answered in the negative i.e., in favour of appellant-insurer and against the contesting respondents 1 and 2. Accordingly it is answered. Though Commissioner has observed that both respondents 1 and 2 namely owner and insurer ought to have deposited the amount, it has directed the appellant-insurer herein to indemnify the claim on account of existence of policy issued to the offending vehicle. In other words liability being joint and several respondents 1 and 2 herein would be at liberty to seek payment of said amount from the owner of the offending vehicle and dismissal of the claim against insurer would not come in the way of respondents seeking payment of said amount from the owner of the offending vehicle.

For the reasons aforesaid following order is passed:

ORDER

1. Appeal is hereby allowed.

2. Order and award passed by Commissioner of workmen compensation, Mandya dated 20.06.2008 in WCA/FC/CR-27/2007 is hereby set aside insofar as directing

the appellant-insurer to indemnify the claim.

3. Order of dismissal of the claim petition against insurer would not come in the way of respondents 1 and 2 proceeding against the owner of offending vehicle and to said extent award of Commissioner is affirmed.

4. Amount in deposit is ordered to be refunded to the appellant-insurer on proper identification by the registry.