

(2008) 01 KAR CK 0045
In the Karnataka High Court
Case No : M.F.A. No. 8698 of 2005

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kullegowda and Chaluvegowda

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Citation : (2008) ACJ 2219 : (2008) ILR (Kar) 1746 : (2008) 6 KarLJ 383 : (2008) 1 KCCR 421

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S. Srishaila, for the Appellant; H.V. Ramachandra Rao, for R1, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The insurer of the offending vehicle aggrieved by the common Judgment and award dated 3.3.32005 in MVC Nos. 74, 75 and 115/97 of the Addl. Civil Judge (Sr. Dn) and MACT, Mandya, for short "MACT", has preferred this appeal.

2. The short point for decision making is, whether the MACT in the facts and circumstances of the case having recorded a finding that the claimants were passengers in the goods carriage and not loaders as contended, was justified in fastening liability on the appellant to pay the compensation and to recover the same from the owner by filing Execution Petition?

3. The answer to the above question need not detain the Court for long. The Apex Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, followed by the Judgment in New India Assurance Co. Ltd. Vs. Vedwati and Others, held that the Motor Vehicles Act, 1988 does not enjoin statutory liability on the owner of the motor vehicle to get his vehicle insured for any passengers travelling in a goods carriage and the insurer would have no liability thereof. Applying the very same principles to the facts of this case in respect of an accident that occurred

on 19.5.1995. the MACT was not justified in fastening the liability on the appellant to pay the compensation and recover the same from the owner by filing Execution Petition.

4. Although learned Counsel for the respondent-claimant contends that no appeal is preferred by the claimant calling in question the finding of the MACT that he was a gratuitous passenger in the goods carriage and not a loader, nevertheless sympathy must prevail while dismissing the appeal. Needless to state that the motor vehicle in question, indisputably a goods carriage, meant for carrying goods and not passengers, in which the 1st respondent-claimant travelled and sustained injuries, it is for the insured-owner of the vehicle to make good the compensation and no liability could be fastened on the appellant-insurer.

5. In my opinion, the controversy brought before this Court being fully covered by the authoritative pronouncements of the Apex Court, referred to supra, this appeal is allowed. The impugned Judgment and award insofar as it relates to fastening of liability on the appellant to pay the compensation and recover the same from the owner of the offending vehicle, by executing the award, is set-aside. It is made clear that the claimant is entitled to enforce the award against the owner of the lorry.

6. Registry is directed to refund forthwith the amount in deposit to the appellant.