

(2007) 06 KAR CK 0019
In the Karnataka High Court
Case No : M.F.A. No. 9803 of 2005

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Mariamma and Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 147

Citation : (2008) ACJ 2603 : (2008) ILR (Kar) 3203 : (2008) 4 KCCR 325 SN

Hon'ble Judges : Subhash B. Adi, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : P.B. Raju, for the Appellant; Pundikai Ishwara Bhat, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—One Jose @ T.J. Chacko, the deceased workman was employed as a Cleaner in the lorry belonging to the 2nd respondent. On 13.12.2002 at 7.50 pm, the deceased was travelling in the lorry of the 2nd respondent as a Cleaner to enable the inmates to take food the deceased got down. He was standing on the extreme side of the road in front of highway Petrol Bunk on NH 17. The bus bearing registration No. KL-14/B/5277 came in a rash and negligent manner hit against the deceased and caused his death. The lorry of the 2nd respondent is insured with the appellant. The existence of Insurance Policy is not in dispute. The fact that the deceased was employed as a Cleaner at the time of accident is also not in dispute.

2. It is the contention of the Insurer (appellant) that at the time of accident the lorry was not in movement. The deceased was not an inmate of the lorry and he had got down for the purpose of taking his meals. While standing, the deceased was hit by the offending bus when he was on the road. In view of the absence of requirement under Clause (c) to the proviso i.e., "being carried in the vehicle", the Insurer is not liable unless the deceased was literally an inmate of the lorry in movement. The deceased should be travelling as a cleaner and the lorry

should be in movement.

3. The policy is issued u/s 147 in terms of the Workmen's Compensation Act, the employer incurs liability when death or bodily injury arises to the employee in the course of and out of employment. Insofar as Insurer is concerned the liability under the Workmen's Compensation Act would arise when the workman is employed in the goods vehicle or in a passenger vehicle. The words being carried in the vehicle need not be interpreted technically and rigidly. A person employed in a goods vehicle as a cleaner is deemed to be in employment and deemed to be "being carried in the vehicle", even in a situation where the vehicle is stopped temporarily in the course of the journey, the accident if it happens in the course of employment and the risk of accident is inherent in the nature of employment, it is deemed to be in the course of and out of employment under the Workmen's Compensation Act.

4. In the instant case the deceased was engaged as a cleaner. The vehicle was stopped temporarily to enable the inmates to take food. When the petitioner was about to cross the road, he was hit by the offending bus. Therefore, the facts clearly disclose that the accident occurred in the course of and out of employment. The fact that the vehicle was not in movement and the deceased was not in the vehicle is not a ground to hold that the Insurer is not liable to pay compensation.

We are in respectful agreement with the view and the decision taken by the Bombay High Court in *British India General Insurance Co. Ltd. Vs. Sabanna Sabanna and Others*, and this Court in the *New India Assurance Co. Limited v. Smt. Channamma And Ors.* ILR 2007 KAR 1289 *Smt. Premila And Ors. v. Shaliwan and Anr.* AIR 2005 KANT 1610

5. The appeal is dismissed. The amount in deposit be transferred to the Motor Accident Claims Tribunal for payment.