

(2006) 11 KAR CK 0059

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2971 of 2002

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sri D. Laxman and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Insurance Act, 1938 — Section 64 (v)

Motor Vehicles Act, 1988 — Section 145, 146, 146 (1), 147, 2 (28)

Citation : (2007) 2 ACC 905 : (2007) ACJ 536 : (2007) 4 KarLJ 224 : (2007) 2 RCR(Civil) 263

Hon'ble Judges : H.L. Dattu, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; J.M. Anil Kumar, for R2, 3 and 4 in MFA No. 2971/2002 and Ashwini S. Halady, for R1, S.P. Shankar for Y. Lakshmikanth Reddy, for R2 in MFA Nos. 2974/2002, 2977/2002, 2978/2002 and 2979/2002, for the Respondent

Final Decision : Allowed

Judgement

1. Since a common question of law is involved in all these appeals, they are clubbed together, heard and disposed of by this common order. At the outset, we intend to notice that these appeals are posted before us in view of the order passed by the learned Single Judge of this Court dated 15.7.2004. The learned Single Judge, while referring the matter for consideration and decision of this Court has stated, that, since an important question of law is involved in these appeals, the matter requires to be considered and decided by a Division Bench of this Court.

2. The appellant in these appeals is common. The respondents are different. The appellant is an Insurance Company. The respondents are the wife and children of one late Sri Mookappa in WC. No. 471/99, injured Sri. Mallikarjuna in WC. No. 343/99, Sri. Hanumanthappa in WC. No. 344/99, Sri Siddaiah in WC. No. 345/99 and Sri. Sanna Appaiah in WC. No. 346/99.

3. The brief facts are:

The date of accident was 5.2.1999. The vehicle that was involved in the accident was a tractor bearing registration No. KA-35 M-851 and a trailer bearing registration No. MYY 7100. The deceased and the injured persons were the employees of one Sri D. Laxman, who is the owner of the tractor-trailer. It is the tractor alone, which was insured with the appellant and the trailer was not insured.

4. The wife and children of late Sri Mookappa, the injured persons Mallikarjuna, Hanumanthappa, Siddaiah, Sanna Appaiah, had filed claim petitions before the Commissioner for Workmen's Compensation, Bellary District, Bellary. After registering the claims, the Commissioner had issued notice to the owner of the tractor-trailer and the Insurance Company. The owner had not disputed with regard to the employment of the coolies, who were travelling in the trailer, but had denied his liability to pay any compensation, since the tractor had been insured with the Insurance Company.

5. The Insurance Company, apart from others, had taken up the plea before the Commissioner that it is only the tractor, which was insured and the trailer was not insured and therefore, the claim made by the wife and children of the deceased and the injured persons in the accident requires to be rejected. The Commissioner, after recording the evidence of the parties, has come to the conclusion that since the tractor was registered, the appendage to the tractor, namely, the trailer in which the deceased and injured persons were travelling are entitled for compensation and accordingly, has quantified the compensation payable by the Insurance Company. Aggrieved by the said order passed by the Commissioner, the appellant is before us in these appeals.

6. Sri. Krishna Swamy, the learned Counsel for the appellant would submit, that under the provisions of the Motor Vehicles Act, 1988 the tractor and the trailer both requires to be insured and in the present case, since the trailer was not insured and the coolies of the owner, namely, Sri. D. Laxman, who were travelling in the trailer are not entitled for payment of compensation by the Insurance Company. In support of that contention, the learned Counsel relies on the view expressed by the learned Judges of this Court in the case of *The Oriental Insurance Co. Ltd. Vs. N. Chandrashekar and Others*, and *National Insurance Company Limited v. Thirakappa Ramappa Itagi and Anr.* ILR 2001 KAR 3037.

7. Per contra, Sri. S.P. Shankar, learned Senior Counsel appearing for the respondents has taken us through the provisions of the Motor Vehicle Act, 1988 ("Act" for short) and then would contend, that though the trailer is not insured, that in view of Sections 146 and 147 of the Act, the compensation requires to be paid by the Insurance Company, since the tractor was insured. In support of his submission, the learned Senior Counsel has taken us through the observations made by the Apex Court in the case of *Natwar Parikh and Co. Ltd. Vs. State of*

Karnataka and Others, , Gunti Devaiah and Others Vs. Vaka Peddi Reddy and Others, and United India Insurance Co. Ltd. Vs. Surinder and Others, .

8. Sri. Shiva Kumar Kollur, learned Counsel while supporting the arguments canvassed by the learned Senior Counsel has also placed reliance on the observations made by a learned Single Judge of this Court in the case of D. Lakshmana Murthy and Another Vs. V. Rajesh By Guaradian and Another, and also the decision of the Madhya Pradesh High Court in the case of New India Assurance Co. Ltd. Vs. Ram Kishore and Others, .

9. In our opinion, the only issue that would arise for our consideration and decision in this appeal is, whether the Insurance Company can be made liable to pay the compensation in respect of the coolies carried in a vehicle, which is not covered by the insurance policy?

10. In order to answer the issue that we have raised for our consideration and decision, in our opinion, some of the provisions of the Motor Vehicles Act require to be noticed. Therefore, they are extracted.

Section 2(28) of the Act defines the meaning of the expression "motor vehicle" or "vehicle". The same reads as under:

Section 2(28): "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters.

Section 2(44) of the Act defines a "tractor". It reads as under:

Section 2(44): "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller,

Section 2(46) of the Act defines a "trailer". It reads as under:

Section 2(46): "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.

11. Section 2(28) of the Act covers two types of vehicles, one is a motor vehicle and the other is a vehicle. The expression "motor vehicle" is not defined under the Act, but the dictionary meaning of the word "motor vehicle" is, all vehicles propelled by any power other than muscular power.

The "vehicle" include bicycles, tricycles and auto-motor car and every wheeled vehicle that is used or capable of being used on a public street.

12. The "tractor" means a machine that pulls or pushes a two wheeled machine over land. They provide chief source of power on farm lands. They are also used

for industrial and military purposes for logging high way constructions and snow clearances. Tractors are normally run with the help of gasoline or diesel engine.

13. The trailer is also defined under the Act. It means a vehicle other than a semi-trailer or a side-car drawn or intended to be drawn by a motor vehicle. In the simplest language, the trailer is a wheeled vehicle that is pulled by an automobile or a truck. They are designed to be used chiefly for cargo hauling in this Country. They are used to carry loads. The trailer is a term again applied to a passenger coach attached to a grip car of a cable road or to the car on an electrical line containing the motive power.

14. Section 2(28) of the Act, as we have already stated, defines the meaning of the expression a "motor vehicle" or a "vehicle". Firstly, it means, a mechanically propelled vehicle. Secondly, it must be adapted for use upon roads. The actual use for a particular purpose is no criteria to decide whether a vehicle is a motor vehicle. Thirdly, the propulsion for the vehicle may be transmitted either from external or internal source. The legislature thereafter designedly used the expression "and includes" to include within the meaning of the expression "Motor Vehicles or Vehicles" chassis to which a body has not been attached and a trailer. The word "includes" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used, these words or phrases require to be construed as comprehending not only such things as they signify according to their natural meaning but also those things which the interpretation clause declares that they shall include. By using the expression "includes", the legislature intends to include a chassis and a trailer within the expression of a "motor vehicle" or a "vehicle". Again u/s 2(28) of the Act, there are certain exclusions i.e. vehicles run upon a fixed rails or vehicles of a special type adapted for use only in a factory or in an enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimeters. Section 2(28) of the Act, intends to include certain things, which may not fall within the meaning of a "motor vehicle" or a "vehicle" and excludes something, which may fall within the definition of a "motor vehicle" or a "vehicle" for the purpose of the provisions of the Motor Vehicles Act.

15. Keeping this in our view, let us turn to Chapter XI of the Act. The said Chapter is provided for the purpose of insurance of motor vehicles against third party risks.

Section 145 of the Act defines the expressions like "authorized insurer, certificate of insurance, liability, policy of insurance, property, reciprocating country and the third party".

Section 146 of the Act speaks of necessity for insurance against the third party risks. Sub-section (1) of Section 146 of the Act reads as under:

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in

relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Provided that in the case of a vehicle carrying, or mean to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for government purposes unconnected with any commercial enterprises.

(3) The appropriate government may, by order, exempt from the operation of Sub-section (1) any vehicle owned by any of the following authorities, namely:

(a) the Central Government or a State Government, if the vehicle is used for government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State Transport Undertaking:

Provided that no such order shall be made in relation to any such authority unless fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the user of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

16. Sub-section (1) of Section 146 of the Act, envisages that no person except a passenger shall use or cause or allow any other person to use a motor vehicle in a public place. The word "use" is used as in contradiction to the word "drive". The word "use" in the context it is used is equivalent to have the use of a motor vehicle or vehicle in a public place. The other part of the Section makes it imperative that an insurance policy must remain in force, with regard to a motor vehicle before it can be used or allowed to be used in a public place by anybody except as a passenger. Exemption from these imperative provisions is however granted only to those Central Government owned or State Government owned vehicles, which are used for administrative and allied purposes but not used for commercial purpose. A conditional exemption may be extended to vehicles owned by the Central Government or a State Government or by a local authority or by a State Transport undertaking and used for commercial purposes, provided that when such authority has established and maintained a fund for meeting liabilities arising out of the use of such vehicles.

The object of Sub-section (1) of Section 146 of the Act is to see that all the vehicles which are used in public places are insured, so that a third party suffering from any damage due to the use of them in a public place can get compensation from the Insurance Company. Therefore, since the trailer is a motor vehicle or a vehicle, it requires to be insured, so that, a third party suffering any damage due to use of it in a public place can get compensation

from the Insurance Company.

17. Section 147 of the Act provides for the requirements of a policies and limits of liability. A detail discussion of the aforesaid Section may not be necessary for the purpose of disposal of the issue that we have raised for our consideration. It is suffice to observe, that the requirements of a policy of insurance insured with regard to the use of particular vehicles are viz., the policy is to specify the person or classes of persons, who are insured with respect to their liability to third parties; the policy is to specify the extent of liability which must extend to the extent specified in Sub-section (2); the policy must be one which insures against any liability in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicles in a public place.

18. In the present appeals, it is not in dispute that the tractor was insured by the owner of the vehicle, but, however, he had failed to insure the trailer bearing registration No. MYY 7110. The tractor-trailer met with an accident on 5.2.1999 and in the said accident, one person died and four other persons were injured. The wife and children of the deceased and the injured persons have filed claim petitions before the Commissioner for workmen's Compensation, Bellary. The Commissioner being of the view, that since the tractor is insured, the appendage, namely, the trailer need not have to be insured and therefore, the persons travelling in the trailer, if they have met with an accident, compensation requires to be paid by the Insurance Company.

19. The learned Counsel appearing for the respondents have contended before us, that the trailer cannot be used without a tractor and if the tractor is insured that is more than sufficient to claim compensation, if for any reason, the coolies travelling in the trailer meet with an accident.

20. In our opinion, under the provisions of the Motor Vehicles Act, both the tractor and the trailer requires to be registered separately. Merely because the tractor is registered, it cannot be said that the trailer need not be registered. Vice-versa is also true, in the sense, if the trailer is registered, it does not mean that the tractor does not require to be registered under the provisions of the Motor Vehicles Act.

21. Section 2(28) of the Act defines the meaning of the expression a "motor vehicle" or a "vehicle" to mean a mechanically propelled vehicle adapted for use upon the roads. The propulsion could be either external or internal. If the legislature had stopped only with that, then it would have been difficult for the Insurance Company to plead that the trailer is also a vehicle and therefore, requires to be insured to claim compensation. But, as we have already noticed earlier, the legislature designedly has included both the chassis and the trailer to fall within the meaning of the expression a "motor vehicle" or a Vehicle" by specifically using the expression "and includes".

22. Section 146 of the Act obligates the owners of a "vehicle" to insure their vehicles against third party risks. If such insurance is there for the vehicle, then

only, if the vehicle meets with an accident, compensation could be claimed either by the persons insured or by the persons, who have injured or expired. Therefore, in our opinion, the Commissioner was not justified in coming to a conclusion, that merely because the tractor was insured and though the trailer was not insured, even then, if the tractor meets with an accident along with the trailer, the coolies travelling in the trailer can claim compensation and compensation requires to be paid.

23. In view of the above, we hold, that in order to claim compensation under the provisions of the Motor Vehicles Act and also under the provisions of the Workmen's Compensation Act, the vehicle in the instant case "trailer" also requires to be insured as required u/s 146 of the Act. We also draw support from the observations made by a Division Bench of this Court in the case of Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, , wherein the Court has observed as under:

Firstly, a tractor is a motor vehicle as defined in Section 2(18). Secondly, tractor is a motor vehicle which itself is not constructed to carry any load, but is meant to use for the purpose of propulsion of a trailer. Thirdly, the trailer is defined as a vehicle other than a side car drawn or intended to be drawn by a motor vehicle.... There can be no doubt that a trailer is constructed for the purpose of carriage of the goods and when it is pulled by a tractor, both together constitute a transport vehicle i.e., a goods vehicle. Tractor-trailer squarely falls within the definition of the words "goods vehicle."

The Insurance Company with which tractor and trailer attached thereto are insured, is liable to pay compensation in respect of dead or bodily injury to employees travelling in the trailer. The liability is limited to six employees and the extent of liability is limited to the amount of compensation payable under the provisions of the Workmen's Compensation Act, unless in a given case, the owner concerned has taken extra coverage by paying an extra amount of premium.

24. The learned Single Judge of this Court in the case of the The Oriental Insurance Co. Ltd. Vs. N. Chandrashekar and Others, , has observed:

7. In the present case, the appellant has only issued a policy in respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor as such. But if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured, the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions, which require even a trailer to be insured. As in this case it is undisputed that only the tractor was insured with the appellant and that the trailer was not insured and that the accident was caused by the tractor-trailer it has to be held that the appellant is not liable to pay the

compensation awarded to the claimant.

25. The aforesaid view is reiterated by this Court in the case of National Insurance Company Ltd. v. Thirakappa Ramappa Itagi and Anr. ILR 2001 KAR 3037. In the said decision, the Court has observed:

The Division Bench followed the view of the Full Bench reported in National Insurance Company Ltd. v. Dundamma to hold that tractor-trailer is goods vehicle. Considering the tariff separately available for the trailers under Clause "A(3)", the Division Bench was of the view that both Tractor and Trailer be independently considered as motor vehicle and should be individually insured. The Insurance cover made available to the Tractor cannot be automatically extended to the trailer, and the trailer also should be separately insured within the meaning of Clause A(3) available u/s 64(v) of the Insurance Act. That is how the word "are" used as against the noun called as "A tractor and a trailer" attached thereto. By deliberately using the word "are" means that both the tractor and the trailer must have been insured.

26. We fully agree with the view expressed by the learned Single Judges of this Court in the aforesaid decisions.

27. Now we notice the decisions on which reliance is placed by the learned Counsel appearing for the respondents.

28. In Re. Gunti Devaiah and Ors. v. Vaka Peddi Reddy and Ors. (2004) ACC 1881, it is a decision rendered by a learned Single Judge of Andhra Pradesh High Court. The decision so rendered has a persuasive value. After going through the said decision, we are not in agreement with the reasoning and the conclusion reached by the learned Single Judge. Therefore, we are of the view, that the observations made in the said decision would not assist the respondents.

29. Reliance is also placed on the decision of the Punjab High Court in the case of United India Insurance Co. Ltd. Vs. Surinder and Others, . That was a case where the offending vehicle was a tractor and the agricultural instrument had been attached to the tractor. Keeping in view the definition of tractor that finds a place under the provisions of Motor Vehicles Act, the learned Judges have observed that tractor itself is not able to carry any load without equipment. Therefore, any equipment attached to the tractor is a part of the tractor and covered under the Insurance policy. The fact situation in the said case is different from the fact situation in the instant case. Therefore, in our view, the reliance placed by the learned Counsel on the said decision is not applicable to the facts and circumstances of the present case.

30. Reliance is also placed on the view expressed by the Apex Court in the case Natwar Parikh and Co. Ltd. Vs. State of Karnataka and Others, . The matter arose under the provisions of the Karnataka Motor Vehicles Taxation Act. The question before the Court was, whether the tractor-trailer could be brought within the meaning of the expression "goods carriage" and taxed at the rate

provided for the goods vehicles? Keeping in view the meaning of the expression "goods carriage" provided under the Motor Vehicles Act, the learned Judges are of the view, that the tractor-trailer can be brought within the definition of a "goods vehicles" and therefore, can be taxed at the rates applicable to the goods vehicles. In our opinion, certain observations made by the Apex Court in this decision would assist the appellant rather than the respondents. In this decision, in the course of the order, the Apex Court has observed, that the words "motor vehicle" have to be read in the broadest possible sense keeping in mind, that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the definitions under Sections 2(14) and 2(47) of the Act shows, that the definition of "motor vehicle" includes any mechanically propelled vehicle adapted for use on roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" u/s 2(14) of the Act and consequently, a "transport vehicle" u/s 2(47) of the Act.

31. Sri Shiva Kumar Kollur, learned Counsel for some of the respondents would rely on the decision of the learned Single Judge of this Court in the case of D. Lakshmana Murthy and Another Vs. V. Rajesh By Guaradian and Another, and the decision of the Madhya Pradesh High Court in the case of New India Assurance Co. Ltd. Vs. Ram Kishore and Others, . For the reasons stated by us in the earlier paragraphs, we do not subscribe to the view expressed in these decisions.

32. Lastly, in so far as the claimant is concerned, it does not matter whether the vehicle is insured or not. Where the vehicle is insured, the liability passes to the Insurance Company to the extent of the proportional liability of its owner. But, when it is not insured, the owner of the vehicle or the person responsible for the accident has to pay the amount of compensation. There is no authority for the proposition, that when the vehicle is not insured, the claimant/claimants are not entitled to any amount.

33. In view of the above, our answer to the issue that we have raised for our consideration is, that for the coolies carried in a trailer which is not covered by a insurance policy, the Insurance company is not liable to pay any compensation. Incidentally, we wish to notice that the owner of the vehicle has not filed any appeals before this Court against the impugned order.

34. Accordingly, the following:

ORDER

I. Appeals are allowed.

II. The order passed by the Commissioner for Workmen's Compensation, Bellary District, Bellary, in W.C.A. Nos. 471/99, 343/99, 344/99, 345/99 and 346/99 insofar as it relates to the fastening of liability on the Insurance company is set aside.

III. It is declared that the owner of the vehicle i.e., trailer is liable to pay the compensation awarded by the Commissioner for Workmen's Compensation, Bellary District, Bellary.

IV. The amounts deposited by the appellant before this Court shall be refunded to the appellant. Ordered accordingly.