(2015) 09 KAR CK 0322

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2566/2009(MV)

The Oriental Insurance Co. Ltd. — APPELLANT

Vs

Vanitha and Others — RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0322

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : M. Sowri Raju, for the Appellant; M.V. Maheshwarappa, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J—The appellant-Oriental Insurance Company filed this appeal challenging the judgment and award dated 6th September 2008 made in MVC No. 458/2007 passed by the District Judge, I Fast Track Court, Shimoga (hereinafter referred to as the Court below'' for short) fastening the liability on the appellant to compensate the claimants.

2. Respondents 1 to 4 are the legal representatives of deceased Devaraj, who died in the road traffic accident occurred on 12-03-2007. The deceased was working as cleaner in a Bus bearing Registration No. KA-01/B-8433 belonging to the 5th respondent herein. Due to the rash and negligent driving of the bus by its driver, the bus met with an accident on 12-03-2007 at about 4.15 a.m., near Srinivasapura Gate, Mandya District on Mysore-Bangalore Highway. He sustained injuries and died in the hospital. The wife, son, father and mother of deceased Devaraj filed a claim petition seeking for compensation of Rs. 13,65,000/- due to the untimely death of the bread earner of the family. The appellant filed statement of objections to the claim petition denying its liability and also contended that there was contributory negligence on the part of the driver of the offending vehicle and also driver of the KSRTC bus. Hence, the KSRTC is necessary party to the proceedings. Further it was contended that the cleaner

working in the bus is not covered by the Insurance policy. Hence, the Insurer is not liable to compensate the claimants and sought for dismissal of the claim petition.

3. On the basis of the pleadings of the parties, the Court below framed necessary issues.

4. The wife of the deceased got examined herself as P.W. 1 and the father of the deceased was examined as P.W.2 and got marked the documents as Ex. P1 to Ex. P6. On behalf of the respondent-Insurance Company, one of its officers was examined as R.W.1 and the insurance policy was marked as Ex. R1.

5. The Court below after considering the oral and documentary evidence adduced by the parties and taking into consideration the police records held that due to the rash and negligent driving of the driver of the offending vehicle, the accident had occurred and the claimants are entitled for compensation. Taking into consideration the age of the deceased as 35 years and his daily earning as Rs. 100/-, deducting 1/3rd towards his personal expenditure, the Court below awarded a sum of Rs. 3,60,000/- towards loss of dependency and Rs. 50,000/- towards conventional head, loss of love and affection. In all, a sum of Rs. 4,10,000/- was awarded to the claimants. With regard to liability of the insurer is concerned, the offending vehicle is the passenger carrying commercial vehicle having package policy for Zone-B and a sum of Rs. 25/- is collected towards legal liability of an employee/driver. The policy covers both the employee as well as the driver. Since the vehicle was covered by insurance policy, the liability was fastened on the Insurance Company to compensate the claimants. Being aggrieved by the said judgment and award, the appellant-Insurance Company has filed this appeal.

6. Sri. M. Sowri Raju, learned counsel appearing for the appellant contended that the judgment and award passed by the Court below is contrary to law and the compensation awarded by the Court below is exorbitant. The additional premium of Rs. 25/- is paid in respect of the driver and not any other employees. The insurance policy in respect of passenger carrying commercial vehicle covers the liability of the driver or conductor and not the cleaner working in the bus. In support of his contention he relied upon the judgment of Hon''ble Supreme Court reported in Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, (2003) 2 ACC 706 : (2003) ACJ 1550 : AIR 2003 SC 2877 : (2003) 116 CompCas 643 : (2003) 3 CTC 380 : (2003) 6 JT 97 : (2003) 3 LLJ 740 : (2003) 135 PLR 796 : (2003) 5 SCALE 377 : (2003) 10 SCC 664 : (2003) 1 SCR 666 Supp : (2003) 2 UJ 1263 and the judgment reported in Oriental Insurance Company Ltd. Vs. Smt. Shoba and Others, (2012) ACJ 2297 : (2011) 5 KarLJ 30 and sought for setting aside the judgment and award insofar as fastening the liability on the Insurance Company and the quantum of compensation is concerned.

7. On the other hand, M.V. Maheshwarappa, learned counsel appearing for the

respondents 1 to 4 argued in support of the judgment and award passed by the Court below and contended that the deceased was working as a cleaner in a passenger carrying commercial vehicle which was having the package policy. The premium of Rs. 25/- was collected which covers the liability of an employee as well as the driver. In the instant case, except the cleaner, neither driver nor conductor claimed any compensation. The deceased being one of the employees, his legal representatives are entitled to claim compensation. The issue raised in this appeal is covered by the Division Bench judgment of this Court reported in B.M. Suresh Kumar Vs. Om Prakash and Others, (2011) ACJ 1032 : (2009) 3 KCCR 2122 and also an unreported judgment made in MFA No. 3071/2009 c/w MFA No. 3072/2009 disposed of on 6th November 2012 and sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the judgment and award and oral and documentary evidence available on record.

9. The records clearly disclose that the deceased was working as a cleaner in a bus bearing registration No. KA-01/B-8433. The deceased died in the road traffic accident occurred on 12-03-2007 due to the rash and negligent driving of the bus by its driver wherein the bus dashed against the rear side of a KSRTC bus which was going ahead of it. In view of the injuries sustained due to accident, the deceased died in the hospital. There is no dispute regarding actionable negligence on the part of the driver of the bus and also regarding occurrence of the accident. The dispute is only with regard to liability and the quantum of compensation awarded by the Court below.

10. With regard to quantum of compensation is concerned, though the claimants have claimed that the deceased was working as a cleaner and getting income of Rs. 500/- per day, no document has been produced in this regard. In view of that, the Court below has taken the income of the deceased at Rs. 100/- per day and deducted 1/3rd towards his personal expenditure. Taking into consideration the age of the deceased as 35 years and applying the appropriate multiplier 15, the Court below has awarded a sum of Rs. 3,60,000/- towards loss of dependency and Rs. 50,000/- towards conventional heads. I find no infirmity or irregularity in respect of the quantum of compensation is concerned.

11. Insofar as the liability is concerned, the offending vehicle is the passenger carrying commercial vehicle having package policy for Zone-B. The additional premium of Rs. 25/- collected covers the risk of the driver or the legal liability of an employee. Hence, the policy covers the cleaner working in a passenger carrying commercial vehicle. The admitted fact is that the deceased was traveling as a cleaner in a passenger carrying commercial vehicle. In view of collection of additional premium of Rs. 25/-, the policy covers the risk of the driver or an employee, i.e. the cleaner traveling in the bus. The Division Bench of this Court in a judgment referred to above has examined the insurance policy of commercial vehicle - passenger carrying ''B'' Policy and conditions imposed in

IMT 10, 11, 12, 18, 19 and 21. Para 12 of the judgment reads as under:

"12. The vehicle in question is passenger bus. The policy is issued in respect of commercial vehicle - passenger carrying ''B'' policy. From the aforesaid clause in the policy, separately risk of the cleaner in not covered under the Act. When the injured pays additional premium and in terms of the insurance policy, risk covered is that of driver, conductor or cleaner, notwithstanding statutory liability, there is contractual liability on the part of insurance company to indemnify the injured in terms of the insurance policy. The Tribunal has not looked into the policy, especially the aforesaid clause in the policy which is not in dispute. Admittedly the additional premium of Rs. 30/- is paid covering the risk of a cleaner and conductor. Therefore, the Tribunal was not justified in exonerating the insurance policy from including the injured and consequently not paying the victim of the accident. To that extent, finding requires interference."

12. The judgment relied upon by the appellant in RAMASHRAY SINGH referred to above is not applicable to the facts of the case on hand. In the said case, the vehicle involved is a Trekker in which, Shashi Bhushan Singh employed as a Khalasi. The seating capacity of the said vehicle including the driver and cleaner is 13+1. The premium is also paid for 13+1. In those circumstances, it was held that the insurer is not liable to compensate the claimant for the injuries sustained by a Khalasi, whereas, in the case on hand, the vehicle is a passenger carrying commercial vehicle and the additional premium Rs. 25/- paid covers the employee/driver. The judgment reported in Oriental Insurance Company Ltd. Vs. Smt. Shoba and Others, (2012) ACJ 2297 : (2011) 5 KarLJ 30 is also not applicable to the facts of the present case. In the said case, the deceased was traveling in a Tractor sitting on the engine of the Tractor. The seating capacity of the Tractor is only one i.e. the driver. Hence, the said judgment is not applicable to the facts of the present case.

13. In the passenger carrying commercial vehicle, the cleaner is being employed and the additional premium paid covers the liability of the cleaner also. The Court below after examining the matter in detail held that the insurer is liable to compensate the claimants for the death of Devaraj. I find no infirmity or irregularity in the judgment and award passed by the Court below. Accordingly, the appeal is dismissed.

