
(2000) 10 KAR CK 0017

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 84 of 1998 (MV)

The Oriental Insurance Company Limited

APPELLANT

Vs

K. Buden Sab and Another

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Citation : (2002) 1 ACC 139 : (2001) 1 ACC 564 : (2002) ACJ 139 : (2000) ILR (Kar) 5030 : (2001) 1 KarLJ 352

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri A.M. Venkatesh, for the Appellant; Sri Basavaraj Kareddy, for the Respondent

Judgement

1. This appeal is by the Insurance Company challenging the award passed by the MACT, Bellary insofar as its liability to satisfy the award is concerned.

2. The first respondent was carrying 200 bags of puffed rice in the lorry belonging to the second respondent and the lorry capsized and fell down on its right side and went into the tank. Consequently, 200 bags of puffed rice was lost and therefore, he filed a claim petition claiming compensation of Rs. 14,030/- being the value of 200 bags of puffed rice and Rs. 2,000/- towards the value of the gunny bags and Rs. 30A being the loading charges. The appellant-Insurance Company in its written statement denied the accident and claimed that the liability if any is subject to the condition of the insurance policy. The Tribunal on appreciation of the evidence, on the issue regarding negligence, has held that the accident is due to negligence of the driver of the vehicle and awarded compensation of Rs. 12,030/- with interest at 9% p.a. from the date of the petition till realisation and directed the second respondent and the appellant to pay the said amount as their liability is joint and several.

3. This appeal is by the Insurance Company contending that the appellant-Insurance Company is not liable to satisfy the award since the insured has not taken any transit coverage for the goods carried in the vehicle and further

contended that the terms of the policy has specifically excluded the loss, if any, occasioned while being conveyed. The Tribunal without considering the contention raised by the Insurance Company has awarded a sum of Rs. 12,030/-.

4. Sri A.M. Venkatesh, learned Counsel appearing for the appellant, submits that the policy does not cover the loss or the damage caused to the property carried in the vehicle and therefore, the appellant is not liable to pay any compensation. Section II, clause (d) of the policy reads as follows.--

"The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a member of the insured's household or being conveyed by the motor vehicle".

From the reading of the said clause it is clear that the damage caused to the property while it is being conveyed is specifically excluded.

5. The first respondent cannot be considered as third party under Chapter VII of the Motor Vehicles Act, 1988. The goods belonging to the first respondent having been carried in the vehicle belonging to the second respondent under a contract, the relationship between them is one of bailor and bailee. As per the policy, the loss occasioned in respect of such goods having been specifically excluded, the Insurance Company cannot be held liable to compensate the loss alleged to have been suffered by the owner of the goods.

6. From the facts of this case the goods are being carried in the vehicle belonging to the second respondent under a contract. If that is so, there is a duty cast upon the owner of the vehicle to provide safe transport. In the event if the owner of the vehicle fails to provide safe transport, he is said to have committed breach of contract and not a tort. Therefore, the Insurance Company is not liable to indemnify the liability of the owner of the vehicle in the absence of not covering the risk under the policy.

7. In the result, I pass the following order:-

(i) Appeal is allowed in part;

(ii) The judgment and award passed by the Tribunal is modified in the following terms:

(1) The first respondent is entitled to get the compensation as determined by the Tribunal from the second respondent;

(2) The Insurance Company is not liable to indemnify the first respondent towards compensation payable by the first respondent.

(iii) No costs.