(2014) 12 KAR CK 0205

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4938 of 2009

The Oriental Insurance Company Limited — APPELLANT

Vs

Susheel — RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 146, 166, 2(13)

Citation : (2014) 12 KAR CK 0205

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : K. Suresh, Advocate for the Appellant; H.C. Shivaramu, Advocate for the Respondent

Judgement

Aravind Kumar, J.—Insurer is in appeal challenging the correctness and legality of judgment and award passed by MACT, Bhadravati dated 12.03.2009 in MVC No. 212/98 where under claim petition filed under Section 166 of the MV Act has been allowed in part and ordering for payment of compensation of Rs. 1,67,000/- with interest at 6% p.a. directing the appellant-insurer to indemnify the said award and recover the same from Owner-Insured to an extent of 50%.

2. I have heard arguments of Sri Suresh, learned counsel appearing for the appellant insurer and Sri H.C. Shivaramu, learned counsel appearing for respondents No. 1 and 2, Sri Rajendra, learned counsel appearing on behalf of Sri S.V. Prakash for respondent No. 3. Respondent No. 4 is served, unrepresented. Notice to respondent No. 5 has been held sufficient vide order dated 16.10.2012. Respondent No. 6 is served, represented, but none appears. Perused the records secured from the tribunal.

3. Parties are referred to, as per the ranking before tribunal.

4. Dependants of Sri Rangaswamy filed a claim petition seeking compensation of Rs. 5,65,000/-contending inter alia that on 22.3.93 he was travelling in a trailor bearing No. MES 5261 belonging to respondent No. 2 which trailor was attached

to the tractor bearing registration No. KA 14 328 belonging to first respondent, and while deceased was travelling in the said vehicle he fell down and came under the wheels of the trailor and sustained grievous injuries and died at the spot. As such compensation was sought. Appellant insurer on service of summons appeared and filed its statement of objections denying its liability contending inter alia that it need not indemnify since trailor in which the deceased was travelling was not insured with it and as such question of paying 50% of the compensation awarded and recovering the same from the second respondent/owner of trailer would not arise. Tribunal on appreciation of evidence allowed the claim petition in part and awarded a sum of Rs. 1,67,000/- with interest at 6% p.a. by fixing the liability jointly and severely on respondent Nos. 1 to 4 and directed the appellant-insurer to indemnify the award in its entirety on the ground that the tractor was insured by it and permitted to recover 50% of the award from the owner of the trailor i.e., the second respondent.

5. It is the contention of Mr. Suresh that when the trailor in question was not insured with the appellant, question of indemnifying the award amount and recovering the same from second respondent to an extent of 50%, namely, from the owner of the trailor would not arise and as such he seeks for setting aside the judgment and award to that extent. He would also contend that the deceased was not entitled to travel in the trailor and as such question of indemnifying the claim would not arise. In support of his submission, he has relied upon a Division Bench judgment of this court in the case of The Oriental Insurance Co. Ltd., vs. D. Laxman and others reported in ILR 2006 KAR. 4355.

6. Per contra, Sri H.C. Shivaramu, learned counsel appearing for the claimants would support the judgment and award passed by the tribunal and he would rely upon the judgment in the case of The Branch Manager, New India Assurance Co. Ltd. Vs. Boregowda and Others, which is also referred to by the tribunal for allowing the claim petition and directing the appellant insurer to indemnify the claim.

7. Having heard the learned Advocates appearing for parties and on perusal of judgment and award in question as well as records secured from the Tribunal, it would emerge that undisputedly deceased Sri Rangaswamy was proceeding in a trailor bearing No. MES 5261 when it met with an accident on 22.3.1993. The records would also clearly indicate namely, the FIR-EX. P8, spot panchanama-EX. P1, the statements given by the eye witnesses Exs. P3, P4 and P5 and the charge sheet-EX. P13 that deceased Sri Rangaswamy was travelling in the trailor bearing registration No. MES 5261 and had fallen down from the said trailor and was run over by the trailor due to which he sustained grievous injuries and succumbed at the spot. It is not in dispute that trailor was attached to the tractor bearing registration No. KA 14 328 which belonged to the first respondent and same had been insured with the appellant herein. In view of the fact that the trailor was not insured and merely because it was attached to the tractor that by itself does not entitle the claimants to seek compensation from the appellant

insurer which was the insurer of the tractor alone and not the trailor. The limits of the liability in respect of the insurer arising out of the accident involving a trailor was the subject matter of consideration by a Division Bench of this court in the case of The Oriental Insurance Co. Ltd., vs. D. Laxman and others reported in ILR 2006 KAR 4355 and it has been held that under the provisions of the MV Act both the tractor and trailor are required to be registered separately and in order to claim compensation under the provisions of MV Act and also under the provisions of WC Act and as such the trailor is also required to be insured as required under Section 146 of the Act. In conclusion it was held that if the injured or dead was carried in a trailor which is not covered by the insurance policy, the insurer would not be liable to pay compensation. It has been held as under:

"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 insured 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 required to be insured as required under Section 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 COMPANY LIMITED vs. HANUMANTHAPPA reported in ILR 1992 KAR 1335 wherein the Court has observed as under:

"Firstly, a tractor is a motor vehicle as defined in Section 2(13). 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 death of 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."

8. In the light of the law laid down by the Division Bench of this court and applying the principles laid down therein to the facts on had it would not detain this court for long to accept the contention of the appellant insurer in the instant case namely that it need not indemnify the claim since undisputedly the trailor in question was not insured with the appellant and as such question of indemnifying the award would not arise. Hence the appeal deserved to be allowed by absolving the insurer of its liability. However, in so far as the award passed by the tribunal fixing the liability jointly and severely on respondents 1 to 3 (before the tribunal) stands affirmed. Hence, for the reasons aforesaid, I proceed to pass the following order.

ORDER

1. Appeal is hereby allowed in part.

2. Judgment and award passed by the MACT, Bhadravathi, dated 12.03.2009 in MVC No. 212/98 to the extent of directing the appellant insurer to indemnify the award and recover the same from the second respondent is set aside and the claim petition filed against the appellant insurer stands dismissed.

3. However, it would not come in the way of claimants seeking the compensation from respondents No. 1 to 3 and to that extent judgment and award stands affirmed. In other words, the claimants would be entitled to recover the compensation awarded from respondent No. 2 (owner of the offending trailor).

4. Amount in deposit is ordered to be refunded to the appellant insurer by the registry on proper identification.