

(2018) 02 KAR CK 0006
In the Karnataka High Court
Case No : 31919 of 2009 (MV)

The Oriental Insurance Company Ltd

APPELLANT

Vs

Mareppa & Ors

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0006

Hon'ble Judges : B. Sreenivase Gowda

Bench : Single Bench

Advocate : Sumitra H., Ganesh Naik

Final Decision : Dismissed

Judgement

1. This appeal is by the insurer of the offending vehicle challenging the judgment and award passed by the Tribunal on the ground of liability.

2. Heard Smt.Sumitra H., learned counsel for the appellant - Insurer and Sri Ganesh Naik, learned counsel for respondent Nos.1 and 2.

3. With the consent of leaned counsel appearing for the parties, the appeal is heard and disposed off finally. Perused the judgment and award of

the Tribunal.

4. As there is no dispute regarding death of one Shankramma in a road traffic accident occurred on 04.07.2007 due to rash and negligent driving

of a Tempo bearing No.KA-28/5853 by its driver and quantum of compensation awarded by the Tribunal, the only point arises for consideration

in this appeal is:

Whether the Tribunal was justified in fastening liability on the appellant - Insurer of the offending vehicle?

5. Smt.Sumitra H., learned counsel for the appellant - Insurer submits that the

deceased having traveled along with her brother and sister-in-law as gratuitous passengers her risk is not covered under the policy. The Tribunal without considering the same has committed an error in fastening the liability on the insurer of the offending vehicle. Therefore, she prays for allowing the appeal by modifying the judgment and award of the Tribunal in so far as its finding on liability is concerned.

6. Sri Ganesh V. Naik, learned counsel respondent Nos.1 and 2 submits that there is no illegality or irregularity in the judgment and award passed by the Tribunal warranting interference of this Court. Therefore, he prays for dismissal of the appeal.

7. It is a case of death of one Shankamma in a road traffic accident occurred on 04.07.2007 due to rash and negligent driving of a Tempo. The

claim petition is filed by the husband and son of the deceased Shankamma seeking compensation from the owner and insurer of the offending

vehicle. The driver and owner of the vehicle who were arrayed as respondent Nos.1 and 2 in the claim petition though were served with the notice

of the claim petition, did not choose to enter appearance and contest the petition and they were placed *ex parte* before the Tribunal. The appellant -

Insurer of the offending vehicle had contested the claim petition on two grounds. Firstly, on the ground that the owner of the offending vehicle

having allowed his vehicle to be driven by a person who had no valid and effective driving licence to drive the vehicle as on the date of accident,

the insurer is not liable to indemnify the owner and pay compensation to the claimant. Secondly, on the ground that the deceased Shankamma

having travelled in the offending vehicle as gratuitous passenger her risk is not covered under the policy and therefore the insurer is not liable to

indemnify the owner and pay compensation to the claimants.

8. The Tribunal in paragraph No.16 of its judgment has held that the insurer has failed to establish its contention that the offending vehicle was

allowed to be driven by a person having no valid and effective driving licence.

9. Perusal of the FIR, complaint and charge sheet would reveal that the vehicle was hired by the brother of the deceased for transportation of

household articles and the deceased travelled in the offending vehicle as representative of the owner of the goods. The Tribunal considering this

material aspect of the matter has held that the deceased having travelled in the

offending vehicle as representative of the owner of the goods, her

risk is covered under the policy and was justified in fastening the liability on the appellant - Insurer.

10. I have carefully gone through the finding of the Tribunal on liability and I do not find any illegality or infirmity warranting my interference.

Therefore, finding of the Tribunal on liability is confirmed and point raised for consideration is answered accordingly.

11. Hence, the following:

ORDER

Appeal is dismissed as devoid of merit.

The amount if any deposited in the above appeal is ordered to be transmitted to the Tribunal for disbursement in favour of the claimants in terms of

the order of the Tribunal.

No order as to costs.