

(2015) 08 KAR CK 0240

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6634 of 2008 (WC)

United India Insurance Co. Ltd.

APPELLANT

Vs

Ayyamma and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0240

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : Manvendra Reddy, for the Appellant; Arunkumar A., Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivas Gowda, J—This appeal is by the insurer of tractor challenging the award passed by the Commissioner for Workmen's compensation on the ground of liability.

2. With the consent of learned counsel for the parties, appeal is heard and disposed of finally.

3. As there is no dispute regarding death of deceased Ayyanna while he was proceeding in the tractor bearing No. KA-36-T-6518 due to rash and negligent driving of its driver, the substantial question of law remains for my consideration in this appeal is:

"Whether the finding of the Commissioner in fastening the liability on the insurer of tractor bearing registration No. KA-36-T-6518 is sustainable in law?"

4. Learned counsel appearing for the Insurer of tractor submits that the policy marked at Ex. R2 does not cover the risk of any person other than driver. The Commissioner without considering this material aspect of the matter is not justified in fastening liability on the insurer. Therefore, he prays for allowing the appeal modifying the judgment and order of the Commissioner on liability.

5. Learned counsel appearing for the claimants submits deceased travelled in the tractor as Hamali as admitted by the owner of the trailer and as referred in the judgment of the Commissioner. Considering this, Commissioner was justified in fastening liability on the insurer.

6. In response to his submission, learned counsel appearing for the insurer of tractor submits if the case of the claimants that the deceased had travelled as Hamali in the trailer, trailer was not insured with the insurer and in such case also liability cannot be fastened on the insurer of tractor.

7. I have perused the order and award passed by the Commissioner including its record.

8. In the claim petition as well in the evidence of PW. 1 who is the wife of the deceased has stated her deceased-husband had travelled as a Hamali in the tractor. Whereas, the owner of tractor in his statement of objection as well as in his evidence examined as RW. 1 also stated that deceased was working as a Hamali in the tractor belonged to him. The case of the appellant-Insurance company is that the policy-Ex. R2 does not cover the risk of any person other than the driver. No person can travel in the tractor other than the driver. The policy marked at Ex. R2, which insured the tractor, does not cover the risk of any other person other than the driver. Therefore, the Commissioner would not have fastened liability on the insurer of tractor. The owner of tractor has not preferred any appeal disputing the award. Now in view of exonerating the insurer from liability, the liability has to be fastened on the owner of the tractor. Hence, question of law framed answered accordingly.

9. Accordingly, appeal is allowed. Judgment and award of the Commissioner is modified insofar as liability is concerned. Appellant-Insurer of tractor is exonerated from liability and liability is fastened on the owner of tractor.

10. The respondent No. 5 owner of the tractor is directed to pay compensation awarded by the Commissioner with interest within two months from the date of receipt of a copy of this judgment.

11. The amount deposited in this appeal is ordered to be refunded to the appellant.

No order as to cost.