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(2009) 06 KAR CK 0021

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 395 of 2008

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Parvathi Bai and Others RESPONDENT

Date of Decision : 16-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 06 KAR CK 0021

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; Vigneshwar S. Shastry, for R1 to R5 and Basavaraj Kareddy, for R6, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Respondents 1 to 5 had filed MVC 460/2005 against the appellant/6th respondent and one J.K. Ramegowda u/s 166 of the Indian Motor Vehicles Act, 1988, he said petition was allowed by the learned Member of the Motor Accident Claims Tribunal-IV at Chickkamagalur, awarding compensation of Rs. 3,13,000/- with interest at 6% p.a. and directing the appellant to satisfy the award. Feeling aggrieved, this appeal has been preferred.

2. One Ramagiri Naik, son of Narayana Naik, resident of T.B. Kaval, Nidagatta post, Kadur taluk in Chikmagalur District, &n agriculturist and shandy businessman, while travelling in the goods van bearing Registration No. KA-18/4337 along with his goods, met with a fatal accident and succumbed to the injuries. The 1st respondent is his wife and respondents 2 to 5 are his children. They filed claim petition u/s 166 of Indian Motor Vehicles Act, contending that, the death of the said Ramagiri Naik was due to actionable negligence of the driver of the said vehicle who was impleaded as respondent No. 3 in the claim petition. The claim petition was contested by the respondents therein. The appellant-Insurer contended that the vehicle being a goods vehicle and the deceased being a gratuitous passenger, it has no legal liability to satisfy

the award, if any, passed. Based on the pleadings of the parties, issues were raised by the Tribunal. First claimant deposed as PW1. Another witness was examined to establish actionable negligence on the part of the driver of the said vehicle. Ex. P1 to P8 were marked in their evidence. On behalf of the respondents, an authorized representative of the insurance Company deposed as RW1. The driver of the said vehicle deposed as RW2. Ex. R1 to R3 were marked in their evidence. After considering the oral and documentary evidence on record with reference to the rival contentions of the parties, the tribunal has held that, the driver having driven the vehicle in rash and negligent manner, Ramagiri Nayak sustained fatal accident and died later. It has further held that, the claimant being the wife and children of the deceased, have suffered the loss.

3. I have heard Sri. O. Mahesh, learned Counsel for the appellant and Sri. Vigneshwar S. Shastry, learned Counsel for the respondents 1 to 5.

4. Sri. O. Mahesh, contended that, the tribunal has grossly erred in fastening the liability on the appellant/insurer in respect of the occupant carried in the insured goods vehicle where such risk was not covered as per policy-Ex. R1. According to the learned Counsel, the judgment and award of the tribunal is contrary to law and material on record an that, the fastening of the liability insofar as the appellant is concerned is liable to be set aside. Learned Counsel placed reliance on the decision of this Court In the case of United India Insurance Co. Limited v. Krishnappa and Anr. reported in 2007 (4) KCCR 2713.

5. Per contra, Sri Vigneshwar S. Shastry, by taking me through the evidence of PW.l, RWs.l and 2 contended that, the tribunal has not committed any error or illegality in fastening the liability on the appellant, which had admittedly Issued the Insurance police/Ex. W. Learned Counsel contended that, the deceased had travelled In the said vehicle on the date of accident alone with his goods and that, he was riot a gratuitous passenger. Hence, fastening of the liability on the Insurance Company, which had entered into contract with the Insured. In the facts and circumstances of the case, Is justified. Learned Counsel made submissions in support of the findings and conclusions of the tribunal In the Impugned judgment/award.

6. I have perused the record.

7. The point mat arises for consideration Is, whether In the facts and circumstances of the case, the tribunal Is justified in fastening the liability on the Insurance Company to satisfy the award.

8. The law as regards fastening of liability on the Insurer to pay compensation for Injuries/death, caused to passengers in goods carriage is well settled. If the said deceased has travelled in the vehicle as a gratuitous passenger, the appellant cannot be held liable to satisfy the award. On the other hand, If the deceased has travelled in the vehicle at the time of the accident along with his goods by hiring the vehicle for transporting the goods, i.e., as a owner of the floods, the award passed by the tribunal against the appellant could be justified.

9. PW-1 is the wife of the deceased. She has stated that, on 05.06.2005, her husband Ramagiri Naik while returning from Javagal shandy with the unsold vegetables in goods vehicle No. KA-18-4337, met with the accident which was on account of the rash and negligent driving of the said vehicle by its driver, received fatal injuries and succumbed. In the cross-examination, on behalf of the Insurance company, she has admitted as true the suggestion made to her, that her husband was travelling in the lorry along with the vegetables by paying the charges. Nothing else has been elicited from PW-1 to come to the conclusion that deceased Ramagiri Naik did not travel with the goods.

10. RW-2, the driver of the vehicle, has stated that, on 05.06.2005 Ramagiri Naik loaded into his vehicle vegetables and greens by paying the hire charges, for transporting them to T.B. kaval in Kadur Taluk and that he travelled in the vehicle as owner of the goods. According to RW-2, he drove the vehicle by observing the traffic rules. According to him, the deceased had consumed liquor and fell down from the vehicle. In the cross-examination by the learned Counsel for the insurance company, he has admitted that he drove the goods vehicle on the date of accident. He has further admitted that, on that day, Ramagiri Naik paid the hire charges and loaded his goods - vegetables and travelled with the goods. Thus, it becomes clear that, the deceased hired the vehicle for the purpose of transporting his goods, namely, vegetables and greens. After loading them, had traveled with his goods and has met with the fatal accident and later succumbed.

11. RW-1, an administrative officer of the insurance company, has admitted that the vehicle had been insured for the period from 08.05.2005 to 07.05.2006 and the policy is at Ex. R-1, which was valid on the date of accident i.e., 05.06.2005. According to him, the policy does not cover the risk of fare paid passengers and Ramagiri Naik had paid the fare and travelled in the vehicle. In the cross-examination, he has admitted that, he is not aware whether Ramagiri Naik travelled with his goods from Javagal shandy to Banawara shandy on the date of accident. RW-1 had no knowledge of hiring of the vehicle for the purpose of carrying the goods and the deceased having travelled with the goods. The best evidence could be that of the driver, who had collected the hire charges, permitted the loading of vegetable goods and carried the owner of the goods in the vehicle towards Banawara. While they were proceeding with the goods in the vehicle, unfortunately, the accident has taken place and the deceased having sustained fatal Injuries has after succumbed. The vehicle having been meant for carrying the goods and the deceased having travelled in the vehicle along with the goods by paying hire charges, the Insurance company has been rightly fastened with the liability to satisfy the award.

12. In the case of Krishnappa (supra), the deceased appears to have travelled as a gratuitous passenger and not in the capacity of owner carrying the goods in the goods vehicle and hence this Court has allowed the appeal. In the Instant case, Ramagiri Naik was not a passenger, but had travelled with his goods, which is

clear from the evidence of both PW-1 and RW-2. In the circumstances, the tribunal is justified in holding that the evidence on record discloses that the deceased was travelling in the vehicle along with his goods at the time of accident and hence the insurance company is liable to pay the compensation.

13. The tribunal is justified in treating the income of the deceased at Rs. 30007-per month keeping in view the fact that, he was an agriculturist and also a business man, doing business in the shandys. Considering his age at 45, the appropriate multiplier of "12" has been applied and the loss of dependency has been assessed. After deducting 1/3rd towards personal expanses of the deceased, the contribution to the family has been rightly taken at Rs. 2000/- per month and the loss of dependency has been correctly assessed and awarded. The amount awarded under the conventional heads is not excessive. The award passed by the tribunal is just.

14. For the foregoing discussions, the appeal is devoid of merit and hence is hereby dismissed. No costs.

The amount in deposit made by the appellant is hereby ordered to be transferred immediately to the tribunal for necessary action.

