
(2008) 02 KAR CK 0026
In the Karnataka High Court
Case No : Misc. First Appeal No. 8673 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Saraswwa Ingale and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147 (1) (b) (ii)

Citation : (2008) ACJ 2585 : (2009) 2 KarLJ 171

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Shivaraj P. Mudhol, for R1-6, D.S. Hosmath and H.M. Niranjana for R-8, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—This appeal is filed by the insurer challenging the correctness and legality of the judgment and award made by the Commissioner for Workmen's Compensation (hereinafter referred to as "the Commissioner" for short), Bagalkot, dated 24.7.2003 passed in Case No. W.C. SR.28/02 whereby the claim petition filed by respondent Nos. 1 to 7 came to be allowed awarding compensation of Rs. 1,84,646/- together with interest at 12% p.a. and directed the appellant to deposit the said amount within sixty days failing which the appellant-insurer is liable to pay interest at 18% p.a. Assailing the same, the appellant-insurer has come up with this appeal.

2. The case or the respondent Nos. 1 to 7 in nutshell is that they are the dependents of late Hanamanth Ingale who was working under respondent No. 8 as a coolie in a tractor bearing Reg. No. KA 29:2806 and trolley No. 2807 and that the respondent No. 8 was paying the deceased, salary of Rs .4,000/- p.m. and batta of Rs. 25/- per day. It is the further case of respondents-claimants 1 to 7 that on 10.9.2001 as per the directions of respondent No. 8, deceased Hanamanth Ingale and others had been to work for bringing the murram i.e. "garasu" and while Hanamanth Ingale was digging a heap of murram, the wall of

the murrum fell on his body. Consequently he died at the spot. Therefore respondent Nos. 1 to 7 filed a claim petition before the Labour Court-cum-Commissioner of Workmen Compensation.

3. The following points arise for the consideration of this Court:

a) Whether the Commissioner is right in holding that there exist a relationship of employer and employee between respondent No. 8 and the deceased Hanamanth? and Whether the court below was further right in holding that the late Hanamanth died in the accident during the course of his employment?

b) Whether there is any violation of terms of the insurance policy issued by the appellant? Is so whether the appellant is liable to indemnify the owner of the vehicle?

4. The contention of learned Counsel for the appellant is that the policy issued by the appellant does not disclose any premium being collected to cover the risk of coolies. The appellant has not collected any premium to cover the risk of labourers. A sum of Rs. 15/- has been collected towards premium to cover the risk of drivers, Rs. 75/- to cover the risk of third party property damage. Merely because the policy was in force as on the date of death of late Hanamappa, it does not mean that the insurer is liable to indemnify the owner of the vehicle. Learned Counsel for the appellant contended that since no premium has been collected, the appellant is not liable to pay any compensation to respondent Nos. 1 to 7 and therefore, the question of liability does not arise. In this behalf he has relied on the decision rendered by the Apex Court in the case of Oriental Insurance Co. Ltd. v. Brij Mohan and Ors. AIR 2007 SCW 3734 wherein it has been held as follows:

Tractor was insured only for carrying out agricultural work which would not include digging of earth and taking it in trolley to brick kiln-Respondent being mere passenger and not owner or driver, his claim petition could not have been allowed-However, considering that he was a poor labourer and had become disabled-Insurer directed to satisfy award with right to realise same from owner of tractor and trolley.

He had also relied on several decisions rendered by Division Bench of this Court as well as the decisions rendered by Apex Court. He has also relied on a decision reported in AIR 2007 SCW 7230 (United India Insurance Co. Ltd. v. Serj Rao and Ors.) wherein it has been held as follows:

M.V. Act Section 147-Liability of insurer Laborers travelling in tractor trollies-Insurance Co. has no liability.

5. It is further argued that the statement of a co-worker of deceased discloses that one Lakshmana Setty, Basappa and the deceased were taken for removal of heap of murrum, they used to travel in the said tractor to reach the place and also used to return in the evening. When the deceased Hanamappa was digging the murrum, the wall of the murrum heap fell down on his body. Therefore he

died but neither himself nor other coolies sustained any injuries. It is further argued that as per Sub-rule (6) of Rule 100 r/w. Section 226 of KMV Rules and Section 2 of the Central Motor Vehicles Act no labourer can be allowed to travel in a tractor and trolley and it is prohibited, even if he works in a tractor and trolley, there is no liability to compensate his death. In this case the deceased has not died during the course of employment i.e. loading and unloading the tractor and trolley but he is said to have been digging a heap of murram taken on contract basis by a road contractor. There is no relationship of employer and employee between respondent No. 8 and the deceased and the liability fixed on the appellant is totally incorrect and illegal and the same is liable to be set aside. The policy issued in favour of respondent No. 8 is for an agricultural tractor and trolley, and he is not expected to use the same to transport or carry murram for construction of the road or repairing of road which amounts to use of the vehicle for business/commercial purposes, contrary to terms and conditions of the policy.

6. While arguing the case, learned Counsel for the appellant drew the attention of the court to definition of "tractor and trolley" and contended that the court-below without appreciating the materials placed on record came to a wrong conclusion in allowing the claim petition of respondent No. 1 to 7 and wrongly fixed the liability on the appellant. Therefore he prayed for allowing of the appeal.

7. On the other hand learned Counsel for the respondent 1 to 7 has submitted that the deceased Hanamanth Ingale, was a coolie under 81th respondent-V.B. Jambagi, every day he used to go for work as a loader and un-loader and there existed a relationship of employer and employee. Therefore the W.C. Commissioner has rightly fastened the liability on the appellant-insurer to pay compensation of Rs. 1,84,646/- with interest at 12% p.a. In support of this contention, learned Counsel for the respondents-claimants relied on a decision in the case of National Insurance Co. Ltd. Vs. Balawwa, , wherein a Division Bench of this Court has held that:

To prove that the accident occurred during the course of the employment, it is not necessary to show that the employee was actually doing the job entrusted to him at the relevant time. If during the period during which he is attending to work, he goes to answer the calls of nature, it cannot be said that during that short period he was out of employment. He must be deemed to be on employment even during that short period.

He has also relied on an unreported decision in M.F.A. No. 1870/2005 (The Divisional Manager Oriental Insurance Co. Ltd. Bellary v. Smt. Shekan Bee and Ors.). He has also relied on another decision rendered by a Division Bench of this Court in the case of National Insurance Co. Ltd. Vs. Lagamanna Giddali, Sidram Shivappa Walki and Raosaheb Dharigouda Patil, , wherein this Court has held:

Motor Vehicles Act, 1988, Section 147(1)(b)(ii) - Motor insurance - Goods vehicle Passenger risk- Extent of liability of insurance Co. - Claim in respect of injuries sustained by coolie carried in tractor-trailer- No extra premium was paid to cover

larger liability.

And also another reported decision of a Division Bench of this Court in M.F.A. No. 4118/2001 (WC) (Smt. Laxmi and Ors. v. Shivanand Nagappa and Anr.) wherein it has been held that:

The injury by accident must arise both out of and in the course of employment

Therefore, it is submitted that the insurer is liable to pay compensation amount awarded by the W.C. Commissioner as held by a coordinate bench of this Court in the case of Bhiv v. New India Insurance Co. in M.F.A. No. 5311/01, etc. Therefore, it is submitted that the W.C. Commissioner was right in awarding compensation and the appeal does not survive.

8. On the other hand, learned advocate for 8th respondent submitted that there is no relationship of employee and employer in between 8th respondent and the deceased Hanamanth Ingale. The evidence placed on record clearly indicates that he was not an employee, the deceased and Ors. were working under one Sathesh Bandivadar to transport the murrain and his vehicle is not at all involved in any accident and therefore, he is not liable to pay any compensation.

9. Heard the counsel for both the parties, I have carefully examined the materials placed on record. The records produced by respondent Nos. 1 to 7 - claimants indicate that initially a case had been registered by the lokapura police in UD No. 15/01 i.e. a case of unnatural death. So during the course of investigation, the statement is said to have been recorded by the concerned police in respect of Radha Bai, wife of late Hanamanth Ingale, Ganapathi, Hanumappa, Basappa and Shivalingappa. The statement of Basappa indicates that Lakshmappa and Hanamappa Ingale had been taken to remove the heap of murram in the land of Ningappa on contract basis. Everyday they used to go to that place by tractor and trolley to remove the hillock of the murram. They used to return by the very same contractor during evening hours. As usual on that day all of them had been to the work place. At about 8 A.M. they were cutting murrain one after another with the help of crowbar. After sometime, the deceased Hanamappa started digging heap of murram layer by layer but all of a sudden the heap of murram fell on his body. Therefore he sustained injury to his head, chest and back. Then he tried to see what had happened. After removing from the heap of murrain, he was dead. Likewise, the statement of Ganapathi discloses that the contention of respondent Nos. 1 to 7 that as a coolie in the tractor belonging to respondent No. 8 while digging heap of murram, it fell down. The other workers were trying to load murram. into the tractor and trolley. Therefore there arises employee and employer relationship between Hanamanth and respondent No. 8. Of course, after investigation, "B" report came to be filed by the police concerned on the ground that it is an unnatural death. P.M. report also discloses that death of late Hanamanth Ingale was due to shock and haemorrhage and asphyxia due to multiple fracture on ribs and injury to vital organs like right leg. Of course, the appellant has not disputed the death of late

Hanamappa while digging the murram.

10. Of course the evidence of one Basappa clearly indicates that Respondent Nos. 1 to 7 are the wife and children of late Hanamanth Ingale. Late Hanamantha Ingale and himself and Ors. co-workers were travelling in the said tractor-trailer to transport the murram, himself and deceased were working as coolies and 8th respondent was paying the wages to them. The evidence of P.W.2 indicates that himself and deceased Hanamanth Ingale were working under 8th respondent/the owner of the vehicle and he was their employer and he was paying salary to them. Therefore, there existed a relationship of employer and employee and late Hanamanth Ingale died during the course of employment expired. Now the only point that arises for consideration is, Whether the owner of the vehicle i.e., tractor-trailer paid any extra premium to cover the risk of the coolies. If so whether the insurer is liable to pay any compensation?

Before going into the question it is necessary to look into Rule 100 of the Karnataka Motor Vehicles Rules, which reads thus:

100. Carriage of persons in goods vehicle- (1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle:

Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle, the total number of persons so carried,

In any other light transport goods vehicle not more than three persons.

Rule 226 of the Karnataka Motor Vehicle Rules reads as follows:

Attendants on trailers-(1) Where a trailer is or being drawn by a motor vehicle, there shall be carried in the trailer or trailers or on the drawing motor vehicle, as the case may be, the following persons, not being less than twenty years of age and competent to discharge their duties, that is to say,-

(a) If the brakes of the trailer cannot be operated by the driver of the drawing motor vehicle or by some other persons carried on that vehicle,-

i) one person on every trailer competent to apply the brake;

11. The definition of Section 2 of the Central Motor Vehicles Rules reads as follows:

Rule-2(b) "agricultural tractor" means any mechanically propelled 4-wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. Agricultural tractor is a non-transport vehicle;

In these rules unless the context otherwise requires,

In the instant case the materials on record clearly indicate that appellant herein issued the policy to cover the wound damage or exclusive of riot and strike

Terrorism and etc. and cover the risk of third party and covered the risk of persons employed in connection with the operation and or loading of vehicle. The liability of the appellant arises only in terms of the policy issued by it, there was no accident took place involving the vehicle in question, the deceased Hanamanth was not employed in the vehicle in question, he just used to travel in the said vehicle in question to reach the work place where he was working as a manual labourer in a land for digging heap of murram. The basic work done/ carried by the deceased was the digging of the murram, the loading of the same to the tractor is only a consequential one, his work is not that of a loader and unloader in the said vehicle. The work of the deceased was in no way connected with the vehicle in question, there is no nexus between the death of the deceased Hanamanth Ingale and the vehicle in question. The policy issued by the appellant is a motor vehicle insurance policy and it was not issued under workmen's compensation act. The risk of all the workers working under the owner of the vehicle is not covered under the policy issued by the appellant, the liability in respect of any workman other than the driver and loaders is not covered under the policy. The policy issued by the appellant is only in respect of the vehicle in question and it covers the risk of labourers working in that vehicle as driver and loaders. In the instant case looking at the nature of work done by the deceased it can not be said that the deceased was employed in the vehicle in question. There may be relationship of employee and employer between the deceased and the owner of the said vehicle but the deceased was in no way connected with the vehicle in question, if the death has taken place while doing the work of digging the land as directed by his employer, which is in no way connected with the vehicle in question, the appellant can not be made liable to indemnify the owner of the vehicle to compensate the claimants. There may be different type of workers working under the employer-owner of the vehicle, but all the labourers working under the owner of the vehicle are not covered under the policy, only those connected with the work in relation to the vehicle in question i.e., tractor-trailer are covered under the policy. In the instant case from the F.I.R and also from the evidence of PW. 2 it is clear that the deceased was working under respondent No. 8 in connection with work other than the tractor-trailer in question. Therefore, the liability fastened on the appellant-insurer by the W.C. Commissioner is totally incorrect, perverse and without proper appreciation of the oral and documentary evidence placed on record by the appellant and the claimants themselves. The death of the deceased Hanamanth Ingale has been admitted by the respondent No. 8. The evidence of PW. 1 has been corroborated by P.W.2 who is a co-employee of deceased Hanamanth Ingale, from the evidence of P.W.2 it is clear that the deceased was working under the 8th respondent. The, deceased Hanamanth Ingale was digging murrain to enable the other labourers to load murram into the tractor-trailer which was parked at few feet away from the murram halla, the place of accident, therefore, deceased Hanamanth Ingale died during the course of employment. Hence, 8th respondent who is the owner of the vehicle and the employer of the deceased was alone liable to pay the compensation to Respondent Nos. 1 to 7.

11. Accordingly, the appeal is allowed in part. The liability fixed on the appellant to pay compensation with interest is hereby set aside. The 8th respondent-owner of the vehicle alone liable to pay compensation with interest as ordered by the commissioner, to the claimants/Respondent Nos. 1 to 7 and he shall deposit the award amount together with interest within six weeks from the date of receipt of a copy of this order.

12. The amount in deposit before this court made by the appellant shall be refunded to it.