

(2003) 02 KAR CK 0001
In the Karnataka High Court

United India Insurance Company Ltd.

APPELLANT

Vs

Ibrahim and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Citation : (2003) 3 ACC 604

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Judgement

M.F. Saldanha, J.—We have heard the learned Counsels representing the two Insurance Companies as also the claimants in these two appeals. The two incidents raise a common ground of appeal namely the question as to whether the Tribunal was justified in holding the Insurance Company liable. In the first of the cases, a death has occurred and in the second case injury was occurred and the liabilities are dissimilar. We do not need to go into the niceties or the factual details because the only point raised by the learned Counsel who represents the Insurance Company is that admittedly the incidents in question took place prior to the amendment in 1994 and at a point of time when the law envisaged that a person traveling in a goods vehicle would not be covered and consequently, the liability of the Insurance Company cannot be invoked. Our attention was drawn to a recent decision of the Supreme Court dated 12.3.2002 in a group of civil appeals wherein the Supreme Court has virtually settled the law as far as this point is concerned by holding that the insurer cannot be held liable to pay compensation to the dependents of a deceased passenger or for that matter to an injured passenger while the passenger was traveling in a goods vehicle and that vehicle met with an accident on account of which the passenger died or suffered bodily injury. The learned Counsel have also drawn our attention to the Division Bench decision of this Court in Irawwa's case reported in ILR 1992 Kar 1952 wherein, the Division Bench had clarified the position that the Insurance Company would not be liable in respect of death or bodily injury to a person traveling in a goods carriage as passenger, hirer or otherwise.

2. Learned Counsel representing the respondents i.e. the claimants sought to draw a distinction by contending that in the first of the two cases the deceased was not a gratuitous passenger or for that matter a person who came within the technical category of somebody who was accompanying the goods. The distinction is sought to be made because it is demonstrated that the deceased had hired the truck to carry a load of tender coconuts, that he was effectively the hirer of the truck who was traveling in the truck along with the entire load of his cargo and that, consequently, he could not be equated with persons who either travel without any payment as passengers or who technically contend that they were traveling because they were carrying some small quantity of goods in the vehicle. The submission canvassed is that the status of the deceased was very different and that he would not come within the definition of passenger in the true sense and that consequently, the finding of the Tribunal ought not to be disturbed. We have carefully considered the facts as also the legal submission and we have also applied our minds very meticulously to the legal provisions then in force and we find that unfortunately there was a total bar to a person traveling in a goods vehicle or goods carrier in any capacity and that is the reason why in the Division Bench decision the Court was quick to use the expression "traveling in goods carriage as passenger, hirer or otherwise". The deceased in this case would normally come within the category of a hirer and would not be entitled to avail of any insurance cover having regard to the state of the law.

3. In the second of the two appeals the claimants' learned Counsel submitted before us that the injured claimant had pointed out that he was traveling in the truck virtually as a crew member or rather, that he would have to be equated or categorised with the employees of the owners because it was contended before the Tribunal that he was traveling in the vehicle in his capacity as a loader. We have carefully examined this plea and we find that on facts itself the claimant is disqualified because it has clearly emerged from the material on record that his contention that he was traveling as a loader on behalf of the owner of the goods is belied by his own statement in the F.I.R. wherein he has pointed out that he was an agriculturist who had got into the truck as a passenger. His learned Counsel sought to place reliance on the statement of another person in the truck which is produced at Ex. P-2 in which statement there is a reference to the effect that the injured was traveling as a loader. In our considered view, even this statement will not assist him unless he was able to show that there is enough evidence on record to fully establish that the injured was an employee of the owner and that he was traveling in the truck in that capacity. The evidence on record does not establish this.

4. Having regard to the aforesaid position, it is inevitable that the appeals will have to be allowed. The result is that the awards in both the cases stand modified to the extent that the liability of the Insurance Company is totally discharged insofar as the Insurance Company cannot be held liable in either of the two cases. This does not mean that the award is in any way affected in so far

as it is open to the claimants to execute the awards against such of the respondents from whom they can recover the amount in question.

5. With these directions, the two appeals are allowed. The amounts deposited by the Insurance Company are directed to be refunded forthwith. No order as to costs.