(2010) 06 KAR CK 0128

In the Karnataka High Court

Case No : M.F.A. No. 5748 of 2002 (MV)

United India Insurance Company Ltd. APPELLANT

Vs

Kalawathi and Others RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Citation : (2011) ACJ 1831 : (2011) ILR (Kar) 1191 : (2011) 1 KCCR 12 SN

Hon'ble Judges : K. Sreedhar Rao, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : R.V. Nadagouda, for the Appellant; I.R. Biradar, for G.G. Chagashetty, for R2 and J.M. Anil Kumar, for R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—One Parimal @ Anand one of the inmates of the jeep belonging to Respondent No. 3 met with an accident. The mother and brother of the deceased had filed petition seeking compensation. The Tribunal awarded the compensation and directed the insurer to pay the compensation. The insurer is an appeal on the ground that the jeep is a private vehicle hired for reward in violation of the terms of the policy. Hence, the insurer is not liable to pay the compensation.

2. The facts disclose that the deceased and other students of agricultural university were travelling in the jeep for the purpose of project work. In the course of the journey, the jeep hit the stationary tractor as a result the son of first Petitioner died.

3. The Petitioner makes an averment to the effect that the deceased and other who were travelling in the jeep was for the purpose of project work. There is No. express averment that the jeep was taken on hire for the purpose of journey. The evidence of PW-1 does also not disclose that the jeep was hired by the deceased and other students for the journey. The insurer has contended that the jeep was taken on hire basis. But there is No. evidence adduced to that effect.

The policy is a comprehensive policy, which covers the risk of inmates.

4. That apart we do not find any rationale for the insurer as a ''State'' to discriminate between the paid inmate and the gratuitous inmate when the vehicle is covered with comprehensive policy. If the vehicle is a private vehicle plyed on hire, the owner may be liable for the penal and fiscal consequences under the Motor Vehicles Act for payment of penalty and taxes applicable to the commercial vehicles. But from the stand-point of the insurer, it makes No. difference whether the inmate is a paid passenger or gratuitous passenger. When the policy issued is a comprehensive policy covering risk of the inmates for a private vehicle, the insurer cannot avoid liability on the ground that the inmate is a paid passenger. In that view, we hold that the terms in the policy, which discriminates the liability of the insurer for the paid inmate and gratuitous inmate is discriminatory and illegal.