(2015) 09 KAR CK 0066

Karnataka High Court (Gulbarga Bench)

Case No: Miscellaneous First Appeal No. 2152/2006 (WC)

United India Insurance Company Limited		APPELLANT
	Vs	
Sanna Thayanna and Others		RESPONDENT

Date of Decision: Sept. 1, 2015

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149, 2(16), 2(28), 2(44), 2(46)
- Workmens Compensation Act, 1923 - Section 2(e)

Citation: (2015) 09 KAR CK 0066

Hon'ble Judges: B. Sreenivas Gowda, J.

Bench: Single Bench

Advocate: Manvendra Reddy, Advocate, for the Appellant

Final Decision: Partly Allowed

Judgement

B. Sreenivas Gowda, J.
Appeal is by the insurer of a tractor challenging the judgment and award passed by the Commissioner for Workmen''s Compensation, Raichur, (hereinafter referred to as ''Commissioner'' for short) on the ground of liability.

2. After hearing the learned counsel appearing for the parties and perusing the judgment and award passed by the Commissioner, the substantial questions of law which arise for consideration in this appeal are:

"i. Whether the finding of the Commissioner on liability in fastening same on the insurer of the tractor is sustainable in law?

ii Whether the owners and the insurers of both the tractor and trailer are jointly and severally liable to pay compensation?

iii. Whether compensation and interest awarded by the Commissioner for Workmen''s Compensation are in accordance with the provisions of the Workmen''s Compensation Act, 1923?

iv. What order or award?"

3. Sri Manvendra Reddy, learned counsel appearing for the insurer of tractor submits that deceased-Urkundamma having travelled in the trailer her risk is not covered under the policy of the tractor and therefore, the insurer of the tractor is not liable to indemnify the owner of the tractor and pay compensation to the claimants. The Commissioner without considering this has committed an error in fastening the liability on the insurer of the tractor. Without prejudice to the said contention and relying upon the judgment of a Division Bench of this Court in the case of The Branch Manager, New India Assurance Co. Ltd. Vs. Boregowda and Others, he submits liability has to be fastened on the insurers of both the tractor and trailer equally. Therefore, he prays for allowing the appeal by modifying the judgment and award of the Commissioner on liability.

4. Smt. Sangeeta Bhadrashetty, learned counsel appearing for the insurer of trailer submits as per the contents of the complaint lodged to the police, the deceased-Urkundamma was an employee of one Rudragowda, a retired Tahasildar, as such, there is no relationship of employer and employee either between the owner of tractor namely Somashekar Gowda and deceased-Urkundamma or between the owner of the trailer namely Basanna Gowda and the deceased. The deceased having travelled as an unauthorized passenger in the trailer, her risk is not covered under the policy of the trailer. Considering this the Commissioner was justified in not fastening the liability on the insurer of the trailer. The owner of the trailer namely Basanna Gowda having insured his trailer along with a tractor owned by him under single/common policy could not have allowed his trailer to be moved with the tractor of someone-else viz., Somashekar Gowda and having done so, the insurer of the trailer is not liable to indemnify him and pay compensation to the claimants as the policy cannot be detached from the tractor and trailer belonged to Basanna Gowda. She further submits that Somashekar Gowda has admitted that the deceased was his employee engaged for doing work in connection with his tractor, as such, there is no relationship of employee and employer between the deceased and the owner of the trailer. On that ground also, the liability could not be fastened on the insurer of the trailer. Therefore, she prays for dismissing the appeal.

5. Sri Basavaraj R. Math, learned counsel appearing for the legal representatives of Basanna Gowda - owner of trailer submits that insuring of tractor and trailer belonged to Basanna Gowda under single policy and thereafter allowing the trailer to be moved along with the tractor belonged to someone-else does not amount to violation of terms of policy under Section 149 of the Motor Vehicles Act which absolves the insurer of the trailer from liability. According to him, in the facts and circumstances of the case, the insurers of both the tractor and trailer are equally liable to pay compensation awarded by the Commissioner.

6. Sri Veeranagouda, learned counsel appearing for the owner of the tractor namely Somashekar Gowda supports the arguments advanced by the learned counsel for the owner of the trailer that the liability has to be fastened on the insurers of both the tractor and trailer equally.

7. It is not in dispute that deceased-Urkundamma was an employee under the owner of the tractor namely Somashekar Gowda S/o. Rudragowda. It is also not in dispute that when she was travelling in the trailer belonged to Basanna Gowda as an employee under the owner of the tractor, the tractor and trailer met with an accident and she succumbed to the injuries. In the complaint lodged to the police by the father of deceased it is clearly stated when deceased along with others was travelling in the tractor of Rudragowda to do coolie in the land of Rudragouda accident was taken place and she succumbed to the injuries. Rudragowda referred in the complaint is none other than the father of Somashekar Gowda who is the owner of the tractor. There is no dispute between the parties that at the time of accident tractor and trailer in question were engaged together for carrying on agricultural activities. The tractor was insured with the appellant - United India Insurance Company Limited whereas, the trailer was insured with the respondent No. 5-the National Insurance Company Limited. As per the insurance policy furnished by the learned counsel for the owner of the trailer along with a memo after serving a copy of the same on the learned counsel for the appellant-the insurer of the tractor, the policy was in force as on the date of the accident and it is admitted by the learned counsel appearing for the insurer of the trailer.

8. It is not in dispute that the tractor and trailer belonged to different owners viz., Somashekar Gouda and Basanna Gouda respectively and they have got separate registration numbers. A perusal of the insurance policy of the trailer belonged to Basannagouda would show that the tractor and the trailer belonged to Basanna Gowda were insured under single policy. There is no condition imposed in the policy that Basanna Gowda should not allow his trailer to be used to carry on activities with any other tractor other than the one insured under the policy. Similarly, there is no condition imposed under the said policy that the trailer has to be used only with the tractor which is insured along with the trailer.

9. In order to resolve the controversies between the parties and to answer the points framed for consideration, it is necessary to know the definitions of tractor and trailer and their use with reference to the relevant provisions of the Motor Vehicles Act, 1988 (for short, hereinafter referred to as "the Act").

10. As per Section 2(44) of the Act, "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

By reading of the definition of tractor, it is clear that tractor is not constructed to carry any load. Although tractor is a kind of heavy goods vehicle as defined under Section 2(16) of the Act which reads as "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;" it (tractor) cannot be used for carrying on any activities without the help of trailer or any other equipment viz., plough etc.

11. As per Section 2(46) of the Act "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

By reading of the definition of trailer it is clear that it would not move on its own and it has to be drawn with the help of another motor vehicle.

Although trailer is a kind of motor vehicle as per the definition of motor vehicle defined under Section 2(28) , which reads as "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres]." it (trailer) cannot be used for carrying on any activities without the help of another motor vehicle with the help of which it has to be drawn.

12. From the above discussion, it is clear that it is the combination of a tractor and a trailer which constitutes a full fledged ''goods carriage'' which is a kind of a transport vehicle as defined under Section 2(47) of the Act which reads as "Transport Vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

13. Further, the combination of tractor and trailer may be used as transport vehicle for carrying on commercial activities or it may be used as miscellaneous vehicle for carrying on agricultural activities depending upon nature of permit and insurance policy.

14. As both tractor and trailer are independent motor vehicles by themselves, they have to be registered separately, however, if both tractor and trailer belonged to one and the same owner, he can either insure them together under single policy or he can insure them separately with two different policies and similarly, either he can insure them with the same insurance company or with different insurance companies. Therefore, law does not contemplate both tractor and trailer should be belonged to one and the same person in order to use them for carrying on activities.

15. When a tractor and a trailer belonged to different owners used together for carrying any activities and during such use, if accident takes place, owners and insurers of both tractor and trailer are jointly and severally liable to answer the claim made either by third parties to such accident or by workers either under the owner of such tractor or trailer for the injury they sustain during the course of their employment or by dependents of such

workers in case of their death. Further, when a tractor and a trailer belonged to different owners allowed to be used together for carrying on activities and during such use, if accident takes place, resulting in injury to worker or in his death who may be an employee either under the owner of tractor or trailer and in such case, relationship of employee and employer between such worker and owner of tractor will be the relationship of employee and employer between him and the owner of the trailer and vice versa and such an purposive interpretation is required to adopted to reach the object and purpose of the Act and such an interpretation would be within the scope of the word ''employer'' as defined under Section 2(e) of the Workmen''s Compensation Act which reads as under:

"2(e). ''Employer includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;''

16. It is because of the reason that either a tractor or a trailer alone cannot be used for carrying on any activities as discussed above. It is in this background, a Division Bench of this Court in the case of The Branch Manager, New India Assurance Co. Ltd. Vs. Boregowda and Others, has held that tractor and trailer may be belonged to different owners and may be insured with different insurance companies, when they moved together and accident takes place and injuries caused or death takes place, owners and insurers of both tractor and trailer are liable to answer the claim equally.

17. In the instant case also, the tractor belongs to one Somashekar Gowda and the trailer belongs to one Basanna Gowda. The tractor is insured with the appellant - United India Insurance Company Limited, and the trailer is insured with the respondent No. 5 - National Insurance Company Limited. When they were moving together on a public road, accident has taken place and deceased who travelled in the trailer as an employee under the owner of the tractor succumbed to the injuries. The contents of the complaint reveals that the deceased along with others was travelling in the tractor of Rudragouda to do coolie work in the land of Rudragouda has to be understood that she travelled in the trailer as an employee under owner of the tractor viz., Somashekhar Gowda who is none other than the son of said Rudragouda since it is nobody''s case that deceased travelled in the tractor. As such, there is no merit in the contention of the learned counsel appearing for the insurer of the trailer that there was no relationship of employer and employee between the deceased and the owner of the trailer. The relationship between the deceased and the owner of the tractor is to be construed there is deemed relationship of employee and employer between the deceased and the owner of the trailer as the trailer belonged to Basanna Gowda was permitted to be used along with the tractor belonged to Somashekhar Gowda. Thus, the owners and insurers of both tractor and trailer are liable to pay compensation equally at the rate of 50% each. The substantial questions of law framed are answered accordingly.

18. The learned counsel appearing for the insurer of trailer submits as the insurer of trailer was not made as party while filing the appeal and they were impleaded in the year 2014, they may be made liable to pay interest on the compensation amount awarded from the date of their impleadment. It is to be noted that the insurer of trailer was arrayed as party in the claim petition before the Commissioner itself. Therefore, there is no merit in the contention of the learned counsel for the insurer of the trailer. Hence, the following:

@JUDGMENTTAG-ORDER

The appeal is allowed in part. The judgment and award passed by the Commissioner is modified insofar as liability is concerned. It is held that the owners and insurers of both the tractor and trailer are jointly and severally liable to pay compensation equally at the rate of 50% each.

The appellant-insurer of tractor and respondent No. 5-insurer of trailer are hereby directed to pay the compensation awarded by the Commissioner to the claimants equally at the rate of 50% each with interest at 12% per annum from 30 days after the accident till the date of payment.

The amount in deposit is ordered to be transmitted to the Principal Senior Civil Judge and CJM, Raichur, for disbursement in favour of the claimants in terms of the award of the Commissioner.

No order as to costs.