

The Divisional Manager Vs. Neelaiah

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Court : Karnataka

Decided On : Oct-17-2016

Judge : S.Sujatha

Appeal No. : MFA 10463/2011

Appellant : The Divisional Manager

Respondent : Neelaiah

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 17th DAY OF OCTOBER, 2016 R BEFORE THE HONBLE MRS.JUSTICE S.SUJATHA M.F.A.NO.10463/2011(MV) AND MFA.CROB.NO.24/2012 IN M.F.A.NO.10463/2011: BETWEEN : THE DIVISIONAL MANAGER UNITED INDIA ASSURANCE CO. LTD., NO.1119/B, M.C.ROAD, MANDYA-571401, BY REGIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., 5TH FLOOR, KRISHI BHAVAN, NRUPATHUNGA ROAD, HUDSON CIRCLE, BANGALORE BY ITS MANAGER ... APPELLANT (BY SRI. O.MAHESH, ADV.) AND :

1. NEELAIAH S/O LATE GIRIYIAH, AGED ABOUT 47 YEARS 2 MAHADEVAMMA W/O NEELAIAH, AGED ABOUT 42 YEARS BOTH ARE R/O KELAGALA PETE ARAKERE TOWN, SRIRANGAPATNA TALUK, MANDYA DISTRICT-571 438.-. 2 - 3. RAJU, AGED ABOUT 47 YEARS S/O KARIGOWDA, R/O ARAKERE VILLAGE AND HOBLI, SRIRANGAPATNA TALUK, MANDYA DISTRICT-571438. ...

RESPONDENTS (BY K.P.M.VERGHESE, ADVOCATE) BY SRI M.Y.SREENIVASAN, ADVOCATE FOR R3) THIS MFA IS FILED U/S1731) OF THE MV ACT AGAINST

JUDGMENT

AND AWARD DATED:16.08.2011 PASSED IN MVC NO.520/2009 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (SR.DN) AND JMFC, SRIRANGAPATNA, AWARDED A COMPENSATION OF RS. 2,90,000/- WITH INTEREST AT 6 P.A. FROM THE DATE OF PETITION TILL DEPOSIT IN THE TRIBUNAL. IN MFA CROB242012: BETWEEN:

1. NEELAIAH S/O LATE GIRIYIAH AGED 48 YEARS 2. MAHADEVAMMA W/O NEELAIAH, AGED 43 YEARS BOTH ARE R/O KELAGALA PETE ARAKERE TOWN, SRIRANGAPATNA TALUK, MANDYA DISTRICT-571 438. ..CROSS OBJECTORS (BY SRI.K.P.M.VERGHESE, ADV.) AND:

1. RAJU, S/O KARIGOWDA, MAJOR, R/O ARAKERE VILLAGE AND HOBLI, SRIRANGAPATNA TALUK.-. 3 - 2. THE DIVISIONAL MANAGER UNITED INDIA ASSURANCE CO. LTD. NO.1119/B, M.C.ROAD, MANDYA - 571 401. (BY SRI.O.MAHESH, ADV. FOR R-2 BY SRI.M.Y.SREENIVASAN, ADV. FOR R1) ... RESPONDENTS THIS MFA.CROB IN MFA.NO.10463/2011 IS FILED U/O41RULE22OF CPC, AGAINST THE

JUDGMENT

AND AWARD DATED:16.08.2011 PASSED IN MVC NO.520/2009 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (SR.DN) AND JMFC, SRIRANGAPATNA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION OF COMPENSATION. THIS MFA AND MFA CROB HAVING HEARD AND RESERVED FOR

JUDGMENT

ON 29.9.2016, THIS DAY, THE COURT DELIVERED THE FOLLOWING: ENHANCEMENT AND SEEKING

JUDGMENT

The appeal is by the insurer whereas the cross-objections is by the claimant challenging the Judgment and award passed by the Motor Accident Claims Tribunal, Srirangapatna, [the Tribunal, for short]. in MVC No.520/2009.

2. The facts in brief are that the parents of the deceased Shivamurthy @ papu@ Shivamallu made a claim for compensation contending that the deceased was a labourer travelling along with other workers in a - 4 - tractor-trailer bearing KA-11/T-8328 and KA-11/T- 8329, being driven by its driver in a rash and negligent manner capsized, due to which the iron rods carried in the vehicle for agricultural operations fell on the deceased, as a result of this, he died on the spot. The insurer entered appearance and contested the matter. The Tribunal after evaluating the evidence, awarded total compensation of Rs.2,90,000/- with interest at 6% p.a. fastening the liability on the appellant -insurer herein. Being aggrieved, the appellant is in appeal, whereas the claimant has filed cross-objections seeking enhancement of the compensation.

3. Learned counsel appearing for the appellant placing reliance on Rule 2(b), (c) and (h) of the Central Motor Vehicle Rules, 1989 (CMV Rules for short) would contend that tractor-trailer is not a transport vehicle. It is contended that Rule 100 of Karnataka Motor Vehicles Rules, 1989 (KMV Rules for short) do not apply to the - 5 - persons carried in the non-transport vehicle. Elaborating the arguments, learned counsel contends that clause (i) and (ii) of Rule 100(1) of the KMV Rules permits one person to be carried in light transport goods vehicle having registered laden weight less than 990 kgs; not more than three in any other light transport vehicle goods vehicle and in any goods vehicle not more than 7 persons are allowed to be carried. It is submitted that Rule 100(4) of the KMV Rules specify that no persons shall be carried in any goods vehicle, (a) unless an area or not less than 0.40 square metre of the floor of the vehicle is kept open for each person. Thus, it is submitted that tractor-trailer being not a carriage vehicle, risk of any person carried in any capacity other than the driver would not be covered under the policy at Ex.R1. Alternatively, it is contended that proviso to Section 147(1) of the Motor Vehicles Act, 1988, (MV Act for short) contemplates that the policy shall not be required to cover liability in respect of - 6 - death, arising out of and in the course of employment of the employee to a person insured by the policy

or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than liability arising under the Workmens Compensation Act, 1923 (W.C. Act, for short) in respect of the death of, or bodily injury to, any such employee: a) engaged in driving the vehicle, or b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or c) if it is a goods carriage, being carried in the vehicle.

4. It is submitted that the risk of a person carried in a tractor-trailer utmost to be restricted to the liability arising under the W.C. Act and cannot be expanded.

5. The learned counsel appearing for the appellant places reliance on the following Judgments: The Oriental Insurance Co. Ltd. -v- D.Laxman and others reported in ILR 2006 KAR4355 i) - 7 - ii) New India Assurance Co. Ltd. -v- Narayan Dhar Swain and another reported in 1999(1) TAC6136. Per contra, Sri.K.P.M.Varghese, learned counsel appearing for the claimant defending the impugned Judgment and award submits that the policy issued by the insurer was Miscellaneous and special type of vehicle package policy, no compensation was claimed under the provisions of the W.C. Act for the employment accident, on the other hand, the accident in question was a road traffic accident, the claimant is entitled to claim compensation under the provisions of the M.V.Act. Section 167 of the M.V. Act provides an option regarding claims for compensation, the person entitled to compensation may claim such compensation either under W.C.Act or M.V. Act, but not under both. The claimant has opted to claim compensation under the provisions of the MV Act. The appellant -insurer has put-forth a plea which was not canvassed before the Tribunal as such, the same cannot be entertained in the - 8 - appellate stage. The Tribunal after extensively considering the evidence on record, fastened the liability on the insurer, which cannot be found fault with. It is further contended that the quantum of compensation awarded by the Tribunal is grossly inadequate and the same requires to be enhanced suitably, considering the factual matrix of the case. In support of his arguments, learned counsel relied on the Judgment of the Honble Apex Court in the case of Ramachandra -v- Regional Manager, United India Insurance Co. Limited (Civil Appeal No.8725/2012 DD28.2013- AIR 2013 SC2561.

7. Heard the learned counsel for the parties and perused the material on record.

8. It is apt to refer to the relevant provisions. Rule 2(b), (c) and (h) of CMV Rules which reads thus: Agricultural tractor means any 2(b) vehicle mechanically designed to work with suitable implements for various field operations and/ or trailers to propelled 4-wheel - 9 - trailer- means a transport agricultural materials. Agricultural tractor is a non-transport vehicle; (c) Agricultural trailer generally left uncovered with single/double axle construction, which is coupled to an agricultural tractor by means of two hooks and predominantly transporting agricultural materials; (d)-(g) xxxxxx (h) Non transport vehicle means a motor vehicle which is not a transport vehicle. used for Placing reliance on these Rules, learned counsel appearing for the appellant contended that the agricultural tractor-trailer is not a transport vehicle, as such Rule 100 of KMV Rules is not applicable to the facts of the present case. Rule 100 of the KMV Rules 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 of the hirer of the vehicle carried free of charge or a police - 10 - officer in uniform traveling on duty may be carried in a goods vehicles, the total number of persons so carried. (i) in light transport goods vehicle having registered laden weight less than 990 kgs. Not more than one; (ii) in any other light transport goods vehicle not more than three; and (iii) in any goods vehicle not more than seven: (2) xxxxx (3) xxxxxx (4) No person shall be carried in any goods vehicle.- (a) unless an area of not less than 0.40 square meter of the floor of the vehicle is kept open for each person; and (b) in such manner- (i) that such person when carried on goods is otherwise in danger of falling from the vehicle; (ii) that any part of his body, when he is in a sitting position is at a height exceeding three meters from the surface upon which the vehicle rests. - 11 - 9. A conjoint reading of Rule 2(b), (c) and (h) of CMV Rules and Rule 100 of KMV Rules makes it clear that in any light transport vehicle, the number of persons permitted to be carried in goods vehicle depends on the laden weight as per proviso (i) and (ii) to Rule 100(1) of the KMV Rules. Clause (iii) of proviso to Rules 100(1) of the KMV Rules permits maximum seven persons to be carried in any goods vehicle. It is thus clear that clause (iii) of proviso to Rule 100(1) of KMV

Rules does not restrict to only transport goods vehicle. In other words, it is applicable even in cases falling under non-transport goods vehicle. Even assuming the arguments of the learned counsel appearing for the appellant that as per Rule 2(b), (c) and (h) of CMV Rules tractor-trailer is not a transport goods vehicle is appreciable, the same falls under clause (iii) of proviso to Rule 100(1) of the KMV Rules, where maximum 7 persons are permitted to be carried in any goods vehicle.-. 12 - Such persons who could be carried in the goods vehicle are : a) Owner; b) hirer; c) employee of the owner/hirer; and d) police officer in uniform. Admittedly, the deceased was travelling as a coolie in the trailer attached to the tractor. Insurance policy at Ex.R1 specifies that the policy was Miscellaneous and special type of vehicles package policy. Insurance policy covered both tractor-trailer. It is the contention of the appellant that no person is permitted to be carried on the tractor-trailer except the driver and the policy coverage is only to the driver.

10. Section 147 of the M.V.Act reads as under: 147 Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- - 13 - (a) is issued by a person who is an authorised insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)- (i) against any liability which may be incurred by him in respect of the death of or bodily 27 [injury to any person, including owner of the goods or his authorised representative carried in the vehicle]. or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee- (a) engaged in driving the vehicle, or - 14 - (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

11. Subsection (4) of Section 149 of the M.V. Act reads as under: (4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person. 12. Subsection (4) of Section 149 of the Act indicates that the insurer cannot include any liability by adding any term in the policy format which is specified by the statute. The insurer is liable to compulsorily cover all the risk arising out of and any motor vehicle - 15 - and the liability of the insurer is co-extensive with that of the insured. However, this is subject to the limitations contemplated under Section 147(1)(b) of the M.V. Act. Thus, it is clear that the coolies who are employees carried in a goods vehicle are compulsorily covered under Section 147(1)(b) of the M.V. Act.

13. The Division Bench of this Court in the case of Oriental Insurance Company Limited -v- Sri MARUTHI reported in ILR 2011 KAR4139 has held that under M.V. Act, by Section 2(14) and (47), the definition of tractor-trailer would definitely indicate, when the trailer drawn or intended to be drawn by a motor vehicle, it becomes a goods vehicle. It is held that as of now there are only two types of policies envisaged under the standard formats as contemplated under Section II-1(i) of the Indian motor tariff. Liability under the liability only policy and package policy are considered to be package policy is held to cover loss or - 16 - damage to the vehicles insured in addition to liability only policy or Act policy. Package policy is construed to be comprehensive policy that all the contents almost similar to the comprehensive policy which were invoked earlier to the introduction of package policy. Referring to different sections envisaged in the policy i.e. miscellaneous and special type of vehicle package policy, it is observed that the wordings of the fully worded policy makes it clear that the vehicle in question i.e., tractor-trailer is a goods vehicle; when the very policy is referred to as the special package policy, unless the insured was fully made known the exact terms of the

contract by including them in the terms of policy, it is nothing but withholding necessary and important information from the insured, the intention of the legislation being to cover compulsorily of the risks arising out of the use of the motor vehicle and that the liability of the insurer is co-extensive with that of the insured subject to Section 147(1)(b), coolies or - 17 - employees are compulsorily insured. The combination of tractor-trailer is held to be nothing short of goods carriage, by virtue of Section 147(1)(b) of fully worded policy r/w Section 147 of the Act, the risk of coolies travelling in a tractor-trailer is covered. Thus, it is held that the claimants were neither gratuitous passengers nor passengers who were travelling in the tractor-trailer for the purpose other than agricultural operations. In the light of the said Judgment, it can be held that tractor-trailer is a goods carriage. Clause (iii) of provision to Rule 100(1) is applicable, the risk of coolies travelling in tractor-trailer as an employee of the owner of the vehicle is insured under the Insurance policy at Ex.R1 as per Section 147(1)(b) of the Act.

14. Now the next question would be whether the claim has to be restricted to the compensation payable under W.C.Act ?. No doubt a defence was taken by the appellant -insurer in the written statement to the effect - 18 - that the petition filed under the provisions of the MV Act is not maintainable and it would have been filed before the Commissioner for Workmens Compensation under W.C. Act. But the same is not substantiated in the evidence of RW-1. There is no iota of evidence led by the appellant -insurer to contend that the claim has to be limited to the entitlement of compensation under the W.C.Act. It is beneficial to refer to the chief examination of respondent No.3/RW-1, which reads thus: The Tractor and Trailor bearing No.KA- 11 T-8328 and 8329 belongs to respondent No.1 was insured with our company. Petitioner son and one Manju and another were travelling on a Tractor and Trailer belongs to respondent No.1 at the time of accident. The policy of offending Tractor does not cover the risk of passengers. The seating capacity of Tractor is one only i.e., driver. Hence, our company is not liable to pay any compensation to petitioners. Therefore, I pray that the Honble court be pleased to dismiss the petition against this - 19 - respondent in the interest of justice and equity 15. The whole focus of the insurer was to establish that the claimant was travelling in the tractor- trailer as a passenger, but insurance policy of offending tractor-trailer do not cover the risk of the passengers. At this juncture, it would be

profitable to refer to the Judgment of the Honble Apex Court in RAMACHANDRA - vs- REGIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED reported AIR 2013 SC2561 wherein it is held thus: 21. From this legal position it is also equally clear that in the instant matter insofar as the entitlement of the claimant to the compensation under the Motor Vehicle Act is concerned, the right of the claimant is not affected. However, the respondent/insurance company had filed an appeal in the High Court contending that the order of the Tribunal could not be sustained in law to the extent of liability - 20 - over and above the liability under the Workmen's Compensation Act and on this point the contention of the appellant/company has been accepted by the High Court overlooking the more important fact that the Respondent insurer company had neither produced the policy of insurance before the High Court nor led any evidence to establish that as per terms and conditions of policy extra premium had not been paid.

22. The question, therefore, is whether the amount of compensation could rightly be apportioned between the insurer/insurance company and the insured/owner of the vehicle. However, the owner of the vehicle had not appeared before the tribunal but the insurance company allowed the matter to be proceeded before the tribunal and when the respondent/insurance company filed an appeal in the High Court, the insured/owner of the vehicle once again failed to appear but the Respondent- Insurance Company did not pursue for his appearance. The High Court, however, further overlooked that the apportionment of the amount of compensation - 21 - between the owner of the vehicle and the insurance company was an inter se dispute between insurance company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the tribunal. If the insurance company acquiesced with the situation and allowed the proceeding to continue even in absence of the insured/owner of the vehicle who has been held liable to pay the amount even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the insurance company and the claimant cannot be made to suffer.

23. Hence, at the stage of appeal before the High Court, we find no legal justification for the High Court to leave it open to the insurance company to realize the amount of compensation beyond Rs.32,091/- from the insured/owner as the plea of the - 22 - respondent/insurance company although was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the respondent/insurance company had not taken the alternative plea either before the tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. The insurance company had failed to raise any plea before the courts below i.e. either the Motor Accident Claims Tribunal or the High Court and it did not even contend that in case the claimant is entitled to any compensation beyond what was payable under the Workmen's Compensation Act, it is the insured owner who was liable to pay as it had no contractual liability since the insured/owner of the vehicle had not paid any extra premium. Thus, this plea was never put to test or gone into by the Motor Accident Claims Tribunal since the insurance company - 23 - neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the insurance company straight away at the appellate stage. 16. As aforesaid, no plea was taken by the appellant-insurer that in case the claimant is held to be entitled to compensation, beyond the extent of liability under the W.C.Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. This plea was not contended even in the evidence led by the appellant-insurer. Thus, this plea was never put to test or addressed by the Tribunal. Hence, the ground now urged by the insurance company straight away at the appellate stage cannot be given effect to and is not fit to be sustained. In the circumstances, the alternative plea now raised by the appellant -insurer that compensation ought to be - 24 - restricted to the entitlement of compensation under W.C.Act, also fails.

17. The judgment relied upon by the learned counsel appearing for the appellant in D.Laxmans case (supra) envisages that under the provisions of the MV Act both tractor-trailer requires to be registered separately in order to claim compensation under the provisions of the MV Act and also required to be insured as per Section

146 of the Act. The coolies carried in a trailer which is not covered by an Insurance policy, the Insurance company is not liable to pay any compensation. The said judgment is not applicable to the facts of the case on hand since Ex.R1, Insurance policy issued by the appellant-insurer covers both tractor as well as trailer.

18. The Judgment in Narayan Dhar Swains case (supra) is also not applicable to the present case in view of the Division Bench judgment of this Court in Maruthi - 25 - case (supra) and the Judgment of the Honble Apex Court in the case of Ramachandra case (supra).

19. As regards enhancement of compensation sought by the cross-objector, it is manifestly clear that as per Ex.P8, Post-mortem report, the age of the deceased is shown as 23 years. In the light of the Judgment of Honble Apex Court in MUNNA LAL JAIN AND ANOTHER vs. VIPIN KUMAR SHARMA reported in (2015) 6 SCC347 the age of the deceased would be relevant factor to determine the multiplier. It is evident that the deceased was a manual worker and was earning Rs.8000/- p.m and in the absence of cogent evidence placed on record, the Tribunal determined the monthly income of the deceased at Rs.3000/-, which is on lower side compared to the normal mode of determination now made by this court in identical circumstances, redetermining the monthly income at Rs.4,250/- would be reasonable. Considering the age of the deceased, adopting multiplier 18, with the monthly - 26 - income of Rs.4,250/- deducting 50% of income towards the personal expenses of the deceased, loss of dependency would work out to Rs.4,59,000/- (Rs.4250/- x 18x 12x 50%); a sum of Rs.1,00,000/- would be the just and equitable compensation towards loss of love and affection; a sum of Rs.25,000/- would be reasonable towards transportation of dead body and funeral expenses; and a sum of Rs.10,000/- towards loss of estate would be justifiable, in view of the judgment of the Honble Apex Court in the case of RAJESH AND OTHERS vs. RAJBIR SINGH AND OTHERS reported in 2013 [9]. SCC54 20. The compensation awarded by the Tribunal is modified as under: Particulars Loss of dependency Loss of love and affection Transportation of dead body and funeral expenses Loss of estate TOTAL Amount [in Rs.]. 4,59,000 1,00,000 25,000 10,000 5,94,000 Sl. No.1 2 4 5 - 27 - 21. Thus, the cross-objectors are entitled to a total compensation of Rs.5,94,000/- as against Rs. Rs.2,90,000/- awarded by the

Tribunal with interest at 6% per annum from the date of the petition till the realization. In the result, the appeal filed by the appellant- insurer stands dismissed and the Cross-objection filed by the cross-objectors is allowed to the extent indicated above. Award amount in deposit shall be transferred to the jurisdictional Tribunal forthwith for disbursement. Sd/- JUDGE In.

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