SUPREME COURT OF INDIA

Mamtaj Bi Bapusab Nadaf

Vs.

United India Insurance Co.

C.A.No.7428 of 2010

(Dalveer Bhandari and Dr. Mukundakam Sharma JJ.)

07.09.2010

JUDGEMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal emanates from the judgment and final order dated 25.10.2005 passed by the High Court of Karnataka at Bangalore in M.F.A.No.5843/2003 (WC) and M.F.A. No.5844/2003 (WC).

3. Brief facts which are relevant to dispose of this appeal are recapitulated as under:

> "The claimants-respondents in M.F.A. No.5843 of 2003 are the legal representatives of one Bapusab Nadaf and the claimants-respondents in M.F.A.No.5844 of 2003 are the legal representatives of Basappa Gurappa Hipparagi, who were workmen engaged in uploading Maize (foodgrain) from a tractor- trailer. When Maize was being unloaded from the tractor to an underground storage bin ('Hagevu'), both the labourers climbed the grocery pit in order to clean the same for storing Maize and while cleaning they fell into the grocery pit. They shouted from inside that they were suffocating, a rope was released to them but they did not catch it and they died due to asphyxia. These facts are not disputed."

4. The learned counsel for the appellants submitted that the Insurance Company has clear responsibility for this accident and the Insurance Company is liable and under an obligation to pay compensation to the appellants. This contention is rebutted by the learned counsel for the Insurance Company. According to him, the vehicle in question was not involved in the accident. He further submitted that there has been no proximity or direct connection with the death of the workmen with the vehicle in any manner. At the time of the accident the vehicle in question was not in operation.

5. The claim petitions filed by the appellants before the Commissioner for Workmen's Compensation, Bizapur, were allowed and the Commissioner vide its judgment dated 24th July, 2003, found the Insurance Company liable to pay compensation to the appellants.

6. Aggrieved by the said judgment, the Insurance Company preferred in M.F.A. No.5843/2003 and M.F.A. No.5844/2003 before the High Court of Karnataka at Bangalore. The High Court allowed the appeals and modified the order passed by the Commissioner and the liability of the Insurance Company was set aside. However, the appellants were at liberty to recover the amount of compensation from the employer.

7. According to the reasoning of the High Court, the vehicle was not involved in the accident and the death of the workmen by no stretch of imagination can be said to have any proximate or direct connection with the vehicle. The High Court also observed that the mere fact that Maize was brought to the spot where the workmen had died in the insured vehicle, would not render the Insurance Company liable in respect of the death, the cause of which was not proximate to the actual user of the vehicle.

8. In the present case, the use of the vehicle was not even claimed as being a ground on which the liability is said to be fastened on the Insurance Company.

9. Learned counsel appearing on behalf of the appellants placed reliance on the decision of this Court in *Shivaji Dayanu Patil and Anr. vs. Vatschala Uttam More*[1]. Brief facts of that case are that a collision between a petrol tanker and a truck took place on a National Highway at about 3.00 a.m. as a result of which the tanker went off the road and fell on its left side at a distance of about 20 feet from the Highway. Due to overturning of the tanker, the petrol contained in it leaked out and collected nearby. At about 7.15 a.m. an explosion took place in the tanker causing burn injuries to those assembled near it including the respondent's son who later succumbed to the injuries. The facts of this case are entirely different and are not applicable to the present case. In this case, the petrol tanker was directly involved in the accident and that all the workmen were directly connected with the accident. This case does not help the appellants in any manner.

10. Learned counsel for the appellants has also placed reliance on a Division Bench judgment of the Karnataka High Court delivered on 24th February, 2006 in M.F.A. No.1870/2005 (WC). In that case, the workman who was working as a loader, went in the lorry and loaded the lorry with stones and thereafter he was required to unload the same close to the Crusher near the quarry along with other loaders. At about 2.30 p.m. in the afternoon, the deceased workman got down from the lorry in order to unload the stones along with other loaders and when they opened the lock at the hind portion of the lorry, the entire load of stones in the lorry fell on him, as a result of which he sustained injuries and succumbed to the injuries on the spot. In this case, the vehicle was directly involved in the unfortunate accident.

11. Both the above-mentioned cases relied on by the learned counsel for the appellants are of no avail to him. These cases do not help the appellants in any manner.

12. Learned counsel for the Insurance Company has placed reliance on the Explanation to Section 147(1) of the Motor Vehicles Act, 1988, which 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- (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 of the death of or bodily 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;
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> (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;
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> 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 (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.
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> Explanation: For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

13. According to the learned counsel for the respondents, on a plain reading of the above quoted Explanation, the Insurance Company cannot be held liable for the death of the workmen and therefore, the Insurance Company cannot be held liable to pay compensation to the appellants.

14. In our considered opinion, on the facts of this case, the view taken by the learned Single Judge of the Karnataka High Court seems to be justified and correct. Therefore, no interference is called for. This appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of this case, the parties to bear their own costs.

[1]*(1991) 3 SCC 530*