Karnataka High Court The Oriental Insurance Co. Ltd. vs N. Chandrashekaran And Ors. on 8 February, 1996 Equivalent citations: 1997 ACJ 512, ILR 1996 KAR 2157 Author: S Venkataraman Bench: S Venkataraman JUDGMENT S. Venkataraman, J. 1. This appeal is filed by the insurer of the tractor bearing No. MYK 6450 who was third respondent before the Tribunal challenging the finding of the Tribunal that the insurer is liable to pay the compensation awarded to the claimant, who is the first respondent, for the injuries sustained by him in an accident which took place on 30.8.1987 at 10.30 p.m. on Cunnigham Road, Bangalore. 2. The Tribunal has held that the first respondent sustained injuries in the accident on account of the rash and negligent driving of the tractor and trailer bearing Nos. MYK 6450 and MYK 5298, respectively, by its driver. It is not disputed that the appellant has issued a policy in respect of the tractor bearing No. MYK 6450 and the trailer bearing No. MYK 5298 had not been insured. The appellant had taken up a plea that as only the tractor had been insured with them and that the accident was caused by the tractor-trailer they are not liable to indemnify the owner of the tractor-trailer, who is the present third respondent. They contended that the policy prohibited the use of the tractor for drawing a trailer and that as there was breach of terms of the policy, the insurer was absolved from any liability to pay the compensation. The Tribunal has held that as the tractor was insured and as the trailer cannot move by itself, the non-insurance of the trailer would not take away the liability of the insurer of the tractor. The Tribunal has therefore made the appellant insurer liable for the entire compensation awarded to the claimant. 3. The learned counsel for the appellant Sri. H.G. Ramesh contended that the policy specifically contains a clause prohibiting the use of the tractor while drawing a trailer and that as admittedly the tractor was drawing a trailer at the time of the accident there is a breach of condition of the policy and as such the insurer cannot be made liable for the compensation. He further contended that the definition of 'motor vehicle' would show that it includes a trailer, that under the Motor Vehicles Act no motor vehicle can be used on the road without it being insured and that as such it is mandatory to insure even a trailer which comes within the definition of "motor vehicle'. His contention was that if even in a case where the trailer is not insured the insurer of the tractor alone is made liable for the claim arising out of an accident caused by tractor-trailer, then those provisions of the Motor Vehicles Act which stipulate that even a trailer will have to be insured become redundant. 4. With regard to the contention that there is a violation of the terms of the policy in as much as the policy has prohibited the use of the tractor for drawing a trailer is concerned, it must be pointed out that an insurer cannot avoid its liability under the policy on the ground that there was violation of some terms of the policy unless its objection falls within the four corners of the defence which the Motor Vehicles Act permits to be taken by the insurer. As the accident took place in 1987 the provisions of the Motor Vehicles Act, 1939 are applicable. Section 96(2)(b) of the 1939 Act specifies the conditions excluding the use of the vehicle, violation of which would give a right to the insurer to avoid its liability and that clause reads as hereunder:"Section 96(2)(b) that there has been a breach of a specified condition of the policy, being one of the following

conditions, namely:- (i) a condition excluding the use of the Vehicle-(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or (b) for organised racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or (d) without side-car being attached, where the vehicle is a motor cycle;" It will be seen that a condition excluding the use of the vehicle for drawing a trailer is not one of those conditions included in the above provision and as such the insurer cannot seek to avoid its liability on the ground that there was violation of the terms of the policy by the tractor being used to draw a trailer. The other contention raised by Sri H.G. Ramesh has some force and requires consideration. Section 2(18) of 1939 defines 'motor vehicle' as hereunder: ""motor 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 or a special type adapted for use only in a factory or in any other enclosed premises." Section 2(30) defines a "tractor" as hereunder: " 'tractor' means a motor vehicle which is not itself constructed to carry load (other than equipment used for the purpose of propulsion) but excludes a road-roller;" Section 2(32) defines a 'trailer' as hereunder: " 'trailer' means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;" 5. It is patent that in view of the definition of a 'motor vehicle' even a trailer must be deemed to be a motor vehicle. Section 94 lays down that no person shall use except as a passenger or causes or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. As a trailer is also a motor vehicle the Statute requires that it should also be insured before it can be used in a public place. As a trailer can move only if it is drawn by a tractor and if it is to be held that the insurer of the tractor is liable to indemnify the owner of the tractor as well as the trailer for any compensation payable on account of an accident arising out of the use of both tractor and trailer, even if the trailer is not insured, then the statutory provisions requiring even a trailer to be insured become redundant. An interpretation which would render some provisions of the Statute redundant should be avoided. 6. The vehicle which has been insured with the appellant is only the tractor. The definition of tractor shows that it is not a vehicle constructed to carry any load. When the tractor draws a trailer then it would become capable of carrying load. Any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not so constructed or adapted when used for carriage of goods is a goods vehicle. As such a tractor which has a trailer attached to it becomes a motor vehicle adopted for carriage of goods and it becomes a goods vehicle. A division Bench of this Court in ORIENTAL INSURANCE CO. LTD. v. HANUMANTHAPPA, after referring to the definitions of motor vehicle, tractor, trailer and goods vehicle, has held that there can be no doubt that a trailer is constructed for the purpose of carriage of the goods and when it is

pulled by a tractor both together constitute a transport vehicle i.e., a goods vehicle. In that judgment the Court has also pointed out that under the Indian Motor Tariff, trailers are covered under the commercial vehicle type and has further pointed out that the fact that tractor-trailers are covered under the commercial vehicle tariffs also supports the conclusion that a tractor-trailer has got to be treated a goods vehicle as defined under Section 2(18) of the Motor Vehicles Act, 1939. 7. In the present case the appellant has only issued a policy in respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor as such. But if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured. As in this case it is undisputed that only the tractor was insured with the appellant and that the trailer was not insured and that the accident was caused by the tractor-trailer it has to be held that the appellant is not liable to pay the compensation awarded to the claimant. 8. For the above reasons this appeal is allowed and the judgment and award of the Tribunal are modified by setting aside that portion by which the appellant is also made liable to pay the compensation. The rest of the judgment and award against the respondents-2 and 3 is not disturbed.