
(2005) 04 AP CK 0076
In the Andhra Pradesh High Court
Case No : C.M.A. No. 585 of 2002

Ande Naga Jyothi and Another

APPELLANT

Vs

Gorla Nagi Reddy and Another

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 140
Workmens Compensation Act, 1923 — Section 30

Citation : (2006) 2 ACC 16 : (2005) 5 ALD 137 : (2005) 4 ALT 459

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : N. Subba Rao, for the Appellant; R. Venkat Rao, for the Respondent

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal, u/s 30 of the Workmen's Compensation Act, 1923, is filed by the applicants, aggrieved by the award passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, in W.C. Case No. 543 of 1996.

2. The appellants herein have filed application before the Tribunal below claiming compensation of Rs. 2,00,000/- against the respondents-opposite parties, on account of accidental death of the deceased, by name, Ande Anneswara Rao on 14-9-1996. It was the case of the applicants that the deceased was working as driver with OP. No. 1 and, was driving tractor bearing No. A.P. 7E.6328 and on 14-9-1996, while he was driving the said tractor for preparing the wet land for plantation of paddy, the tractor turned turtle. It was their case that in the said accident, the deceased received grievous injuries and died. On a complaint to the police, a case was registered in Cr. No. 69 of 1996 on the file of the Police Station, Medikondur. It was the further case of the applicants that the deceased was aged about 28 years and was earning Rs. 1,800/- per month as wages. Compensation was claimed on account of loss of dependency etc., from the O.P. Nos. 1 and 2.

3. The respondents herein, who were the Opposite Parties 1 and 2, contested the

proceedings before the Tribunal below. The first respondent-O.P. No. 1, while admitting, that the deceased was working as driver, and died during the course of employment, it was his case that, as much as the tractor was insured with the second respondent-O.P. No. 2, he is not liable to pay any compensation. It was the case of the second respondent-O.P. No. 2- insurer that the tractor of the first respondent-O.P. No. 1 was not insured with them and the compensation claimed was excessive and exorbitant.

4. With reference to the above pleadings, the Tribunal below framed the following issues for trial:

(1) Whether the deceased was a workman as per the provisions of the Act and he died due to personal injuries received in an accident arising out of and in the course of his employment?

(2) What was the age of the deceased at the time of accident?

(3) What were the wages paid to the deceased at the time of accident?

(4) Amount of compensation payable? And

(5) Who are liable to pay the compensation?

5. To prove the claim, on behalf of the claimants, the first applicant was examined as A. W. 1 and Exs.A-1 to A-4 were marked on their behalf. On behalf of the respondents, R.W.1 was examined and Exs.R-1 to R-4 were marked.

6. The Tribunal below, having regard to the oral and documentary evidence on record, while recording the finding that the deceased died in the accident occurred during the course of employment, has held that inasmuch as no proof was produced to show that the deceased was having valid driving license, no compensation can be awarded to the applicants. However, referring to the provision u/s 140 of the Motor Vehicles Act, 1988, compensation of Rs. 50,000/- is awarded on account of "no-fault liability", in addition to Rs. 100/- on account of stamp duty.

7. In this appeal, it is submitted by Sri N. Subba Rao, the learned Counsel appearing for the appellants that inasmuch as it was proved that the accident occurred during the course of employment, the Tribunal below ought to have assessed the compensation payable to the applicants. Further, it is submitted, in any event, merely referring to the report of the R.W.1, the Tribunal below ought not to have recorded any finding on the issue of driving licence held by the deceased-driver. The learned counsel placed reliance on the judgments of the Supreme Court in the cases of Sohan Lal Passi Vs. P. Sesh Reddy and others, and Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, .

8. On the other hand, it is submitted by Sri R. Venkat Rao, the learned counsel appearing for the second respondent that the first respondent-owner has violated the policy by allowing the vehicle to be driven by the driver who was not possessing valid driving license, as such, they are not liable to pay any

compensation.

9. With reference to the above submissions, it is to be seen, in this case, that, it is not in dispute that the deceased died during the course of employment. As per the averments of the claim petition and evidence on record, it is clearly proved that the deceased died during the course of employment with the first respondent while driving the tractor, which was insured with the second respondent. The Tribunal below has not assessed the compensation only on the ground that the claimants have not proved that the deceased was possessing valid driving license at the time of accident. The plea of the second respondent that the driver was not having driving licence, is no reason to record the finding that no compensation can be awarded to the applicants. In any event, even with regard to issue, whether the driver was possessing valid driving license or not, except the report under Ex.R-1, which was prepared by an Advocate-Commissioner appointed by the insurer, no other evidence was adduced. It is not fairly well settled that the Insurance Company in order to avoid its liability towards insured, has to prove, that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of policy regarding driving of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time. Mere absence, fake or invalid licence or disqualification of the driver for driving alone are not in themselves defences available to the insurance company. The Apex Court held so, while dealing with the provisions under the Motor Vehicles Act, 1988 in a recent judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . Further, in the case on hand, the Insurer has also not proved by sufficient evidence to record the finding that the driver-deceased was not possessing valid driving licence. As the above aspects are not considered by the Tribunal below, and, further, the assessment was not done only on the ground that the driver was not possessing valid driving licence, it is evidently a fit case to set aside the judgment of the Tribunal below and remit back for reconsideration by the Tribunal. Accordingly, the judgment under appeal is set aside and the matter is remitted back to the Tribunal below for fresh consideration. However, it is open for the parties to lead any further evidence in the matter. If any compensation is paid pursuant to the award of the Tribunal below, the same shall be subject to further orders to be passed by the Tribunal below.

10. The Civil Miscellaneous Appeal is allowed to the extent indicated above. No order as to costs.