

(1989) 11 AP CK 0002
In the Andhra Pradesh High Court
Case No : A.A.O. No. 750 of 1986

Andhra Pradesh State Road Trans. Corpn.	APPELLANT
Vs	
K. Veeraswamy and Others	RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1990) ACJ 1013

Hon'ble Judges : Radha Krishna Rao, J

Bench : Single Bench

Advocate : D.R. Reddy, for the Appellant; K.N. Rao and K. Raghavachary, for the Respondent

Final Decision : Allowed

Judgement

Radha Krishna Rao, J.—The claimants filed a petition u/s 110-A of the Motor Vehicles Act, 1939, (in brief "the Act"), for compensation for the death of one Karasala Chittemma. The claimants are her husband and children. Chittemma died on 14.3.1983 in an accident that took place on the extreme right side of the Grand Trunk Road while returning from reconstruction office to her house at Pedakakani, near Guntur. The bus involved in the accident is ADG 528 belonging to the first respondent in the original petition. The 3rd respondent in the original petition is the insurance company while the 2nd respondent, the A.P. State Road Transport Corpn. took the vehicle on hire. The Tribunal below after considering the evidence found that the act of rash and negligent driving of the driver of the bus as pleaded by the claimants which resulted in the death of Chittemma was made out by the claimants. With regard to the compensation, the Tribunal came to the conclusion that the husband is entitled to a compensation of Rs. 10,000/- and the 2nd petitioner is entitled to Rs. 7,500/- and the third petitioner is entitled to Rs. 10,000/- towards compensation. The claim of the 4th petitioner has been rejected. The Tribunal also directed that the compensation awarded to petitioner Nos. 2 and 3, i.e., sons of Chittemma shall be deposited in Andhra

Bank, Kannavarithota Branch till they attain majority and during the period of minority the 1st petitioner was permitted to withdraw the interest that might be deposited into the court on their amounts as well as the interest on fixed deposits and also permitted to withdraw the costs and the compensation awarded for their maintenance without furnishing any security. In awarding the compensation the Tribunal fixed the liability on the 2nd respondent in the original petition, i.e., the AP. State Road Transport Corpn. (hereinafter referred to as "the Corporation"). The Corporation has now filed the present appeal.

2. The main contention that has been raised on behalf of the appellant is that the Corporation is not the owner of the vehicle which was involved in the accident and the same was hired for a limited purpose, the control of the vehicle still lies with the owner, and the driver who plied the vehicle at the time of the accident was the person appointed as driver by the owner of the vehicle and so the liability fixed on the Corporation is not correct.

3. The learned counsel for the insurance company contended that as the vehicle has to run on the instructions of the appellant herein as per the time schedule given by it, the control of the vehicle lies with the Corporation only and, therefore, the Corporation alone is liable to pay the compensation and neither the insurance company nor the owner of the vehicle is liable to pay the compensation. In support of his contention he relied upon a decision of this court reported in *New India Assurance Co. Ltd. v. S. Ramulamma* 1989 ACJ 596. In that case the question that arose was whether in a case where the vehicle has been requisitioned by the Government and where an accident took place during the requisition period, the insurance company is liable to pay the compensation. After considering the case law and Section 94 (1) and (2) of the Act, this court held:

The liability during the period of requisition, in this case, has been specifically excluded under the terms of the policy Exh. B-1. When a valid requisition is there for a vehicle and the user of the vehicle has been changed from the real owner to the State Government, in the event of an accident that takes place by the requisitioned vehicle, the claim should be against the Government alone. When a specific condition, i.e., Clause 9 is envisaged in Exh. B-1, the policy, as contemplated u/s 94 (2) of the Motor Vehicles Act, it must be deemed that the liability also has been transferred during the period of requisition by the Government. Mere payment of bhatta to the driver to whom the vehicle is entrusted does not mean that the effect of requisition has been lost. Once the vehicle is given out by way of requisition, the effect of requisition divests the liability of the insurance company, during the period of requisition. The G.Os., Exhs. B-2 and B-3, issued by the Government clearly point out that during the period of requisition, the owner has no right over the vehicle. The Government is the proper party that has to be impleaded.

4. The above decision has no application to the facts of the present case as there is no question of requisition by the Corporation in this case. By means of an

agreement entered into between the owner of the vehicle and the Corporation, the vehicle was hired by the Corporation. When the vehicle was hired to a third party for a limited purpose on contract basis, the position is entirely different. We have to consider here as to what is the control that has been exercised by the third party in whose favour the vehicle was entrusted and the same has to be deducible from the contract that was entered into between the parties.

5. In *M.S. Ramachandram Pillai Vs. K.R.M.K.M. Kumarappa Chettiar and Another*, , the owner of the lorry lent the lorry and the driver to one Subrahmanya Chettiar for marriage purpose at the time of the accident. In that case the Madras High Court held that the owner of the lorry was liable for the damages caused. In *United India Fire and General Insurance Co. Ltd. v. Maddali Suseela* 1979 ACJ 110 , it was held that the insurer continues to be liable notwithstanding the clause providing for excepting the insurer from liability in respect of an accident during the period of requisition. In *General Assurance Society Ltd. v. NA. Mohammed Hussain* 1966 ACJ 203 , the workman died and, therefore, a liability is cast upon the owner under the Workmen's Compensation Act. In that context it was pointed out that the insertion of a clause is bad. But they never said that the ownership has been transferred under the requisition and so the liability of the insurance company can be fixed. In *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani* 1958 ACJ 559, the question of use of the vehicle by the mechanic when it was entrusted for repairs was considered. In that case the Supreme Court pointed out that there is an implied contract at the time of entrustment of the vehicle to the repairer. When the limited use has been effected there, if any accident occurred, the insurance company is held liable to pay the compensation. It is in that context of fixing the third party's liability where there is no specific condition, the Supreme Court has allowed the plea that the user of the vehicle by the mechanic at the time of repairs has to be considered and the liability of the insurance company can be fixed.

6. This court in C.M.A. No. 973 of 1984; decided on 26.10.1988 had occasion to consider a question similar to the one raised in the present case. In this context it is relevant to note Section 110-B of the Act which reads as follows:

Award of the Claims Tribunal.--On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109-B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

Provided that where such application makes a claim for compensation u/s 92-A in respect of the death or permanent disablement of any person, such claim and

any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VII-A

7. The Tribunal below after considering the entire evidence on record came to the conclusion that the vehicle was driven rashly and negligently and the 2nd respondent in the original petition, i.e., the Corporation is liable to pay the compensation.

8. The contention of the learned Standing Counsel for the Corporation is that in view of the language adopted in Section 110-B of the Act, the owner of the vehicle and the insurance company are liable to pay the compensation in the event of a finding that the vehicle was driven rashly and negligently. The agreement between the Corporation and the owner of the vehicle was marked as Exh. B-1. That agreement specifically excludes the liability of the Corporation in the event of any accident. In similar circumstances, the Delhi High Court in *Usha Sehgal v. Chhote* 1985 ACJ 515, found that the contract between the owner of the vehicle and the Delhi Transport Corporation by a specific term excluded the D.T.C. from any liability and had reiterated the liability of the owner as provided by the Act. The court ultimately held that in the event of a claim in respect of a hirer, the D.T.C. is not liable to pay.

9. In this case, on a reading of the language adopted in Section 110-B of the Act and the agreement, Exh. B-1, it can easily be inferred or construed that the owner of the vehicle is liable to pay the compensation in the event of any accident. The liability of the insurance company is not excluded in the event of hiring the vehicle to a third party, and there is no clause in the agreement that in the event of any accident, the Corporation alone is liable to pay the compensation. On the contrary, the agreement is that the vehicle has to be maintained properly in good condition and the driver appointed by the owner has to drive the vehicle and the owner alone is liable to pay the claims that have been made by the third parties. The owner of the vehicle alone is liable to pay the compensation in the event of any accident and the Corporation is not liable to pay merely because a private vehicle was taken on hire in service of the Corporation and the licence was in the name of the owner of the vehicle and what is contemplated in the agreement, Exh. B-1, about the liability is correct. The contract excludes the Corporation from any liability and so the Corporation is not liable to pay.

10. The contention of the insurance company is that the control of the vehicle completely vests in the Corporation alone. There is no force in the contention. In the case of requisition of the vehicle by the Government, after considering the provisions of Section 95 of the Act, the Orissa High Court in *National Insurance Co. Ltd. v. Durdadahya Kumar Samal* 1988 ACJ 540, held that the insurance is a contracted guarantee to the owner of the vehicle to discharge his liability under the terms of the policy and it is not a universal guarantee for the vehicle whosoever becomes the owner and the liability during the period of requisition

has been specifically excluded under the terms of the policy. If the terms of the policy specifically excluded the hiring of the vehicle to the Corporation or some other party by arrangement, then the plea of the insurance company can be accepted. But there is no exclusion just like in the case of requisition of the vehicle. Merely because it was hired for a limited purpose as it is pointed out by some of the judgments cited above, it cannot be said that the Corporation became the owner and the insurance company is not liable particularly in the absence of any specific clause in the agreement or in the statute. The liability of the owner when the vehicle was requisitioned by the Government stands on a different footing than the owner of the vehicle that was hired to a third party for a limited purpose, i.e., for running the vehicle on a specified route, or for a marriage party or for carrying goods or for some other purpose which is not contrary to the terms of the policy. When once it was found that the driver of the vehicle drove the vehicle rashly and negligently which resulted in the death of Chittemma, the owner of the vehicle is liable and the insurance company is also liable to pay that compensation subject to the statutory liability fixed thereon.

11. In the result, the appeal is allowed and the original petition is dismissed as against the Corporation, i.e., the 2nd respondent in the original petition. The decree and judgment of the Tribunal are modified to that extent. No costs.

12. Before parting with the case, I may deal with the point about the monies that were directed to be deposited in the bank with regard to the minors. By experience, it has come to light that the claimants are not in a position to receive the amounts that have been awarded by the Tribunals. It is in that context it is the duty of the court to issue necessary directions while awarding compensation to the claimants and see the avowed objects of the Act are properly achieved. In the case of minors, the amount can be apportioned between them and the same may be directed to be deposited in the bank. If money is required for their maintenance they can be allowed to draw the interest accrued on that deposit only. Instead of their being directed to be present in the court, the amount that fell to their share can be deposited in a bank and a direction can be given by the Tribunal to credit the interest accrued on that deposit to their personal account to be opened by the minor represented by the guardian and they can be permitted to draw the amount.

13. In the case of majors, it is not permissible for the court to impose any restrictions about the drawal of the amounts that fell to their share. But the court can issue crossed cheques in their individual names and hand over the cheques to the concerned person alone after due identification in the presence of the Advocates. But difficulty arises in the case of disabled or crippled persons who are unable to be present in the court. If they are allowed to draw the amount, there is every possibility of the amount being misused by the persons who are looking after the disabled persons. Under those exceptional circumstances or in some other exigencies, the court can take reasonable precaution to see that the compensation amount is intact and only the interest can be utilised for the

benefit of the beneficiaries. In other cases where the claimants are majors who can look after themselves, it is not permissible for the court to impose any restrictions for the withdrawal of the amount. It is the duty of the court to see that the compensation amount reaches the correct individual and that it should not be knocked away by any intermediaries. The Tribunals should incorporate the conditions in the order so that they be incorporated in the decree also. The Presiding Officers should ensure the parties about the exact amount of compensation for which they are entitled to and also the contents of the cheque issued in their favour.

14. In this case, as some of the claimants are minors, the Tribunal below is perfectly justified in directing the amount to be deposited in the bank by permitting the guardian to draw the interest accrued thereon.