
(2013) 12 AP CK 0144
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1338 of 2011

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Vadthavath Kamalamma @ Bikkibai and Others	RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 1 AnWR 347

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Dr. B. Siva Sankara Rao, J.—The 2nd respondent-insurance company filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Mahabubnagar, (for short, "Tribunal") in M.V.O.P. No. 410 of 2008, dated 17.02.2011, awarding compensation of Rs. 3,67,000/- (Rupees Three lakhs sixty seven thousand only) with interest at 6% per annum as against the claim of the claimant of Rs. 5,00,000/- (Rupees Five lakh only) in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act"). Heard Sri T. Mahender Rao, the learned counsel for the appellant-2nd respondent. Against the appeal 1st respondent notice served, against the appeal 2nd respondent notice sent not yet returned and respondents 3 to 5 are minors represented by the 1st respondent and against the appeal 6th respondent (owner of the auto) served but not appeared, thus taken up the appeal to decide on merits. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

2. The contentions of the insurer in the grounds of appeal as well as in course of hearing in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal was erred in arriving a

wrong conclusion and compensation awarded to the claimants is highly excessive, that the award in granting compensation against the insurer to indemnify the insurer even there are policy terms violations is against to the principles of law and prayed to set aside the award of the Tribunal in fixing liability on insurer by exonerating insured and also to reduce rate of interest and quantum of compensation while arriving just compensation.

3. Now the points that arise for consideration in the appeal are:

1. Whether the insurer is not liable to indemnify the insured for the claimants and the compensation arrived by the Tribunal of Rs. 3,67,000/- on different heads requires interference by this Court and if so with what extent for just compensation and against whom with what rate of interest with what observations?

2. To what result?

POINT No. 1:

4. The factual matrix that were proved before the Tribunal is that, on 27.06.2008 when the deceased and the 2nd claimant were proceeding by their cycles separately to go to Mahabubnagar to attend personal work, when they reached near Gandigadda of Boyapalli village, the driver of auto bearing No. AP 22 W 8537 drove in high speed and rash and negligent manner, dashed against the cycle of the deceased, due to which the deceased fell down and sustained injuries and died on the spot. Subsequently, the claimants 1 to 5 wife, major son and minor son and minor daughter of the deceased by name Dharma Naik filed the claim petition stating that the deceased was aged about 40 years and earning Rs. 200/- per day by doing mason work and since the deceased was the sole bread winner of their family they prayed to pass an award of Rs. 5,00,000/- towards compensation under various heads. After considering the material on record and after hearing both sides, the Tribunal awarded compensation of Rs. 3,67,000/- with interest at 6% p.a. against respondent Nos. 1 and 2 jointly and severally.

5. Though one of the contentions of the claim petition 2nd respondent is regarding the quantum of compensation is excessive, the quantum of compensation is no way excessive from the age of the deceased about 42 years and the multiplier is 14 as per the expression made in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and the earnings would be taken as Rs. 3,000/- per month and from the claimants are 5 in number, 1/4th has to be deducted for personal expenses apart from loss of consortium, the 1st claimant is entitled to Rs. 1,00,000/-, funereal expenses at Rs. 25,000/-, loss of estate Rs. 20,000/-, the quantum is no way on high side, but for no cross appeal this Court has no right to enhance the compensation as laid down by the Apex Court in Ranjana Prakash and Others Vs. Divisional Manager and Another, in categorical terms that in the appeal filed by insurer or owner or driver as the case may be, the claimant but for to support the quantum on one ground or

other has no right to ask for enhancement of compensation so also the appellate authority has no power under Order XLI Rule 33 C.P.C. to enhance in absence of independent appeal or cross objections. Further the rate of interest requires interference as the appellate Court as per the settled expression of the Apex Court even though no cross-objections also got the discretionary power under Order LXI Rule 33 C.P.C. to award reasonable rate of interest as laid down by the Apex Court in D.D.A. and Others Vs. Joginder S. Monga and Others, and thus u/s 171 of the MV Act as laid down in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others,

6. Now, coming to the other contentions in the grounds of appeal mainly that the Tribunal was erred in saddling liability on the insurer despite the driver was not having valid driving licence to drive light motor vehicle transport auto since possessed non-transport light motor vehicle driving licence concerned, the finding of the Tribunal in Para 10 is that it makes no difference from the driving of the auto with the licence, he possessed from 1996 including on the date of accident as the transport and non-transport is only in use and not in size is untenable in the eye of law; More particularly for the reason that u/s 9, 4 and 6 of the Act, it is not automatic entitlement from any length of possessing non-transport light motor vehicle to get transport light motor vehicle even but for on specifying with the tests and as such it has to be established as on the date of accident, there is eligibility with valid transport licence, even it is the similar vehicle in use while driving. In fact as can be seen from the very licence copy of the driver filed under Exs. A-8 read with Ex. B-2 extract and Ex. B-6 with reference to the evidence of R.W-1, it is clear that he was having only non-transport light motor vehicle licence which is valid and the auto since transport light motor vehicle, the valid licence to require is transport light motor vehicle. Even he got the eligibility otherwise a breach is a breach so far as driving with non-transport light motor vehicle, the transport light motor vehicle concerned from what is stated supra. However, the insurer cannot be exonerated totally as it is not so fundamental to avoid liability to indemnify the third party claimants on behalf of the insured u/s 168 of the Act as per the policy in force and cover the risk for nothing to attribute from any conscious knowledge of the insurer in allying the driver with defective licence. There is also nothing to show said violation contributed the accident much less with conscious knowledge. So, said disqualification of the vehicle owner contributed the accident and is not the case of conscious knowledge of the 1st respondent to the claim petition.

7. Having regard to the above, the insurer is liable to satisfy the claimants indemnifying the insurer and recover. No doubt in National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, , the two judge bench of the Apex Court in this decision by referring to National Insurance Co. Ltd. Vs. Swaran Singh and Others, apart from other expressions in National Insurance Co. Ltd. Vs. Kusum Rai and Others, and Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, and Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, held that the insurer is not liable to indemnify the owner, when the driver has no

valid license to drive the crime vehicle.

8. The same is also the position of law in *Sardari and Others Vs. Sushil Kumar and Others*, it is in fact an extreme case on facts. It was observed in para 6 of the judgment by the Supreme Court that, time and again made distinction between cases where 3rd party is involved vis-à-vis owner of the vehicle was involved. The object of Sections 147 & 149 of the MV Act enacted was social justice doctrine envisaged in the preamble of the constitution, however, the Act itself provides where the insurance company can avoid its liability. The avoidance of such liability by insurer largely depends upon violation of conditions of the Insurance Contract. Where the breach is ex-facie apparent from the record, court need not fasten liability on the insurer. In certain situations, however, the court while fastening liability on insured, may direct the insurer to pay to the claimants and recover the same from the insured.

9. It is clear from the decisions that once there is material to say conscious knowledge of owner of defective or no licence of driver, insurer cannot be made liable. In fact, the three judges bench judgment of the Apex Court in *Swaran Singh (supra)* well laid down the law in this regard referring to *United India Insurance Company Ltd. Vs. Lehu and Others*, among others and the principle laid down therein was approved and reiterated even in the subsequent decisions including the above but for distinguishing for the facts on hand in each of the cases as held by the Apex Court in *National Insurance Co. Ltd. Vs. Geeta Bhat and Others*, that the principle is the same but for any deviation from factual matrix of each case if at all to say non-liability. Even in the latest expression of the Apex Court in *S. Iyyapan Vs. United India Insurance Company Ltd. and Another*, it was held. Having regard to the above, the point No. 1 is answered.

POINT No. 2:

10. Accordingly and in the result, while dismissing the appeal and while modifying the rate of interest from 6% p.a. to 7.5% p.a. from the date of claim petition till the date of realization with joint and several liability of the insurer and insured (respondents 1 and 2 in the claim petition) to pay by the insurer and then to recover. The respondents shall deposit said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Co. Ltd. v. Lehu (supra)* & *Nanjappan (supra)* that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit in bank to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimants (but for to invest in a bank) till such attachment order is made and made absolute from appearance and hearing. However, after the same, the Tribunal shall not withhold the amount of the claimants, if there is any necessity to permit for any withdrawal but for to

invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.