
(2012) 12 AP CK 0079
In the Andhra Pradesh High Court
Case No : MACMA No. 2740 of 2009

Ch. Jayamma and Others

APPELLANT

Vs

N. Krishnakanth and Others

RESPONDENT

Date of Decision : 28-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 4 ALD 75

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : C.M. Prakash, for the Appellant; S.A.V. Ratnam Counsel for the Respondent No. 3, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Kantha Rao, J.—This appeal is filed by the claimants against the award dated 28.9.2006 passed by the Motor Vehicle Accident Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad in OP No. 2603 of 2006. I have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the third respondent/ Insurance Company.

2. The appellants/claimants filed a claim case u/s 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs. 8 lakhs on account of the death of the deceased-Ch. Venkatachary in a motor vehicle accident occurred on 15.3.2006 while the deceased and others were travelling in a car bearing No. AP 26 H 1044 towards Jaiprakash Nagar for the purpose of attending pooja at Hanuman Temple.

3. The learned Tribunal on evidence recorded a finding that the accident was caused due to rash and negligent driving of the car driver. There being, no challenge to the said finding by the Insurance Company, it became final and does not require any consideration in the present appeal.

4. The claimant filed the present appeal, assailing the award passed by the

Tribunal below on two grounds viz.:

(1) That the compensation granted by the Tribunal is not just and reasonable and requires enhancement.

(2) That the Tribunal went wrong in holding that the third respondent/Insurance Company is not liable to pay compensation to the claimants.

5. Point No. 1: As regards the compensation, though the age of the deceased was mentioned as 33 years in Ex. A2-inquest report and Ex. A3-post-mortem report, the learned Tribunal considering the fact that in the first information report his age was mentioned as 38 years and also taking into account of the admission made by PW1, the wife of the deceased in the cross-examination that her husband was aged 36 years, arrived at the conclusion that the age of the deceased was between 36 to 40 years on the date of accident. The said finding was arrived at by the learned Tribunal basing on the admission of PW1, who must be aware of the actual age of the deceased, and thus needs no interference in this appeal.

6. The learned Tribunal also rightly considered the income of the deceased, who was a goldsmith at Rs. 3,900/- per month. Since the approximate age was considered by the Tribunal rightly between 36 to 40 years, it rightly applied multiplier and granted compensation of Rs. 5,31,200/- with interest @ 7.5% per annum from the date of petition till the date of realisation. This Court will interfere with the quantum of compensation only when the same is not properly computed and is not just and reasonable. Since the approximate age and income were considered by the Tribunal and the compensation granted is fairly reasonable, the quantum of compensation does not require any interference in this appeal. The point is therefore, answered against the claimants.

7. Point No. 2; As regards the liability of the Insurance Company, the contention advanced on behalf of the Insurance Company before the Tribunal as well as in this appeal is that Ex. B1-policy was issued under a private car policy, but at the time of accident the deceased was being carried in the vehicle for hire. The insured, therefore, violated the terms and conditions of the policy, and as such the third respondent is not liable to pay compensation. It is also contended that the vehicle was used for carrying passengers on hire, the driver shall possess a transport driving licence with badge. But, the driver of the offending vehicle was only having non-transport driving licence without any badge and as such, the owner of the vehicle violated the terms and conditions of the permit and thus, the Insurance Company is not liable to pay compensation. The learned Tribunal below accepted the contention of the Insurance Company and held that the Insurance Company is not liable to pay compensation to the claimants and consequently fastened the liability to pay compensation on the insured alone.

8. The said finding is assailed by the claimants in the present appeal. There is no dispute about the fact that the offending vehicle was insured under a comprehensive policy. Though the claimants contended that the deceased had

not travelled in the said vehicle as a passenger for hire, the admission made by PW1, the wife of the deceased and PW2, the eye-witness to the accident in the evidence before the Tribunal is clear to the effect that the deceased and others took the offending vehicle on hire for the purpose of going to the temple for attending pooja. In my view, because of the said clear admission it is not open for the claimants now to contend that the car was not taken on hire.

9. Further question therefore, would be even if the car was taken on hire by the deceased and others whether the Insurance Company is still liable to pay compensation to the claimants in view of the fact that the policy under which the vehicle was registered is a comprehensive policy.

10. In *Kamala Mangalal Vayani and Others Vs. United India Insurance Co. Ltd. and Others*, , the Supreme Court held as follows:

Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the Comprehensive Insurance Policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled.

11. As in the case before the Supreme Court, in the instant case, the Insurance Company failed to establish that the insured committed breach of any terms and conditions of the policy. In this case, the owner of the offending vehicle remained ex-parte and the Insurance Company did not take any steps to summon the owner of the offending vehicle to confront him on the point that the vehicle was used contrary to the permit, terms and conditions of the policy.

12. In *United India Insurance Company Ltd. Vs. Kalawathi and Others*, , Division Bench of Karnataka High Court held as follows:

From the standpoint of the insurer, it makes no difference whether the inmate is a paid passenger or gratuitous passenger. When the policy issued is a Comprehensive Policy covering risk of the inmates of a private vehicle, the insurer cannot avoid liability on the ground that the inmate is a paid passenger. In that view, we hold that the terms in the policy, which discriminate the liability of the insurer for the paid inmate and gratuitous inmate, are discriminatory and illegal.

13. In the cross-examination, RW1, the Development Officer, Administration in respondent No. 3/Insurance Company admitted that Ex. B1-policy covers the risk of the third party. The learned Counsel appearing for the appellants/claimants brought to the notice of this Court that the circular dated 16.11.2009 was issued by the Insurance Regulatory and Development Authority. In the said circular, instructions were issued to the insurers to the effect that the liability of the

insured in respect of the occupants carried in a private car/pillion rider carried in a Two-Wheeler under Standard Motor Package Policy (also called comprehensive policy) the insurers shall indemnify in the event of accident caused by or arising out of the use of the said vehicles insured under a Comprehensive Policy. Therefore, in view of the circular issued by the IRDA, the Insurance Company is liable to indemnify the owner of the vehicle, in case of a comprehensive policy, notwithstanding the fact that the policy issued is for a private vehicle and passengers were carried in the said vehicle for hire.

14. In view of the above, the finding of the learned Tribunal that the Insurance Company is not liable to pay compensation is set aside and it is held that the owner and the third respondent/Insurance Company are jointly and severally liable to pay compensation to the appellants/claimants. This point is answered in favour of the appellants and against the third respondent/Insurance Company. The appeal filed by the appellants/claimants is therefore, partly allowed. There shall be no order as to costs.