

(1997) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 805 of 1991

Chinna Gangappa

APPELLANT

Vs

B. Sanjeeva Reddy and Another

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D, 2(24), 95

Citation : (1997) 1 ALT 475

Hon'ble Judges : Neelam Sanjiva Reddy, J

Bench : Single Bench

Advocate : K. Somakonda Reddy, for the Appellant; M. Sreenivasa Rao, for the Respondent

Final Decision : Allowed

Judgement

Neelam Sanjiva Reddy, J.—The Injured-petitioner in O.P. 334/88 on the file of the Motor Accidents Claims Tribunal-cum-III Addl. District Judge, Kurnool, dissatisfied with the compensation awarded by the Tribunal, preferred this appeal.

2. The appellant, aged about 27 years was eking out his livelihood as a labourer and Hamali earning about Rs. 25/- per day. On 25-1-88 at about 5.30 p.m., the tractor AAQ 5260 and trailer 5261 were in the auto garage of one Satyanarayana at Adoni. The tractor was under repairs since sometime separately in the garage. While the appellant was loading some bags into the trailer, the driver reversed the tractor towards the trailer without observing the persons working around and without giving proper precautions to the workers and consequently the appellant, who was loading the trailer, was crushed between the trailer and the tractor. His both legs were crushed. After rendering first-aid in the Government hospital at Adoni, he was shifted to Government hospital, Bellari for expert treatment. He gave a complaint about the accident on 3-2-88. He was treated at much expense. The injuries have resulted in permanent disability. He cannot walk freely without limp and cannot do any hard work much less labour work. He underwent a lot of pain and suffering due to injuries. He preferred the above

claim for a total compensation of Rs. 1,00,000/- from the owner and insurer of the tractor-trailer involved in the accident. The claim was resisted. The Tribunal found that the appellant sustained fractures resulting in permanent disability in the accident involving tractor-trailer AAQ 5260 and AAQ 5261 on 25-1-88 at about 5.30 p.m., but found that the appellant failed to prove that the accident was caused due to rash and negligent driving of the tractor by its driver and consequently awarded compensation only on the principle of "no fault liability" dismissing the rest of the claim.

3. Sri K. Somakonda Reddy, learned counsel for the appellant submitted that there is abundant evidence to establish that the accident was caused only due to rash and negligent driving of the tractor by its driver and not due to any negligence on the part of the appellant and that the tribunal erred in holding otherwise. He further submitted that the compensation claimed by the appellant towards loss of future income, loss of income during treatment for injuries, pain and suffering, medicines, treatment, transport and incidental expenses is quite reasonable and the appellant is entitled to the said amount.

4. Sri M. Sreenivasa Rao, learned Counsel for the insurer-respondent, submitted that the accident did not take place in a public place and therefore the insurer is not liable to pay compensation.

5. The owner or insurer has not filed any appeal or cross-objections questioning the finding of the tribunal that the appellant sustained fractures of legs and consequent permanent disability in an accident involving tractor-trailer AAQ 5260 and AAQ 5261 driven by its driver on 25-1-88 at about 5.30 p.m. in the premises of the auto garage of Satyanarayana at Adoni. The evidence of P. W. 1, the appellant amply shows as to how his legs were crushed between the trailer and the tractor when the tractor was driven by its driver in reverse without proper precautions in a rash and negligent manner. This version finds place in Ex.A-1, FIR given by P.W.I. Ex.A-2 shows that on the basis of Ex.A-1, a case in Cr. No. 25/88 was registered at Adoni II Town Police Station and after due investigation of the case, the driver of the tractor was challaned in the Court of the Spl. Judicial II Class Magistrate, Adoni for causing this accident. The respondents did not examine the driver of the tractor to rebut the evidence of P.W.I. The evidence of P.W.I cannot be discredited merely on the ground that there was a delay in giving complaint to the police. Considering the fact that both legs of the appellant were crushed, it was quite possible and probable that he was not in a position to give a complaint immediately. Naturally everybody was interested in treating him. It might be that they did not think of lodging a complaint immediately. I am of the view that the delay in lodging a complaint with police would not affect the credibility of the testimony of P.W.I. Hence, I am of the opinion that the tribunal erred in holding that the accident did not occur due to rash and negligent driving of the tractor by its driver.

6. Section 2(24) of the Motor Vehicles Act, 1939 defines "public place". It reads:-

"public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

7. Our High Court in Lanka Sarmma Vs. Rajendra Singh and Others, held that:-

"Where the coolies were hired for loading and unloading stones to be delivered at dam site and accident occurred near the dam site, the place of accident would have to be considered as one falling within the definition of "public place" though it belonged to the Public Works Department as the workmen constituted public and as such, the place was a "public place".

The words "other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature. A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle."

It was further held that:

"A reading of Section 95 would clearly show that it is within the contemplation of the Statute that a third party insurance should cover a liability that might arise out of Workmen's Compensation Act. Under the Workmen's Compensation Act, a liability might arise even though the accident took place in a so called private place so long that accident took place in the course of employment. This part of Section 95 clearly shows that it would not be a correct interpretation of Section 95 to hold that third party compulsory insurance need not cover an accident that occurred on a factory premises. This clear implication of an express provision of law cannot be denied by reference to the Explanation appended to Section 95. The purpose of a legal explanation is not to enact but to explain. It is merely clarificatory of the provisions.

Claims for compensation made against the insurance companies by the dependents of the workmen killed or injured within the premises of a factory cannot be defeated by the insurance companies on the ground that the general public have no right of access to such factory premises."

8. A Full Bench of Bombay High Court in Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others, relying on the above decision of this Court and also some other decisions held that

"The term "public place", is a term of art, the same having been defined specifically by Sub-clause (24) of Section 2 of the Act. The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is

not so much concerned with the ownership of the place as with its user. The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose. Hence, all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act."

9. Learned counsel for the insurer relied on a decision of Madras High Court in Nagarathinam Vs. Murugesan and Others, , wherein it was held that a Petrol bunk is not a "public place". On the other hand, the opinion of our High Court (1 supra) was relied on by the Full Bench of Bombay High Court (2 supra). I prefer the view taken by our High Court and Bombay High Court.

10. In the instant case, the appellant was at the workshop for the purpose of loading and unloading goods. His presence in the premises of the auto garage was not prohibited. Evidently, he was there with the express or implied permission of the owners of the garage. The garage of Satyanarayana, where the accident occurred has to be construed as a "public place" as defined u/s 2(24) of Motor Vehicles Act, 1939 and consequently the insurer is also bound to indemnify the liability of the owner of the vehicle. There cannot be any dispute about the liability of the owner of the vehicle to compensate the victim of the accident in this case. Therefore, both the owner and insurer are jointly and severally liable to pay compensation to the appellant under "fault liability" also.

11. The evidence of P.W.1 and P.W.2, the doctor who treated the appellant and Exs.A-4 to A-7, establish the fact that both legs of the appellant were fractured and he was treated for a long time at much expense and the injuries have resulted in permanent disability to the extent of 15% of each leg. Thus, the permanent partial disability can be taken at 30% as spoken to by P.W.2. The nature and extent of disability has permanently affected his capacity to work as a labourer.

12. Though P.W.1 pleaded and testified that he was earning Rs. 25/- per day, I am inclined to fix his daily income at Rs. 10.40 ps. basing on the minimum wages of a hamali. Loss of future income due to 30% permanent partial disability calculated on a multiplier of 16, which is appropriate to the age of the appellant, comes to Rs. 17,971/-. The evidence shows that he was treated for over a month as in-patient and loss of income during treatment for about one month comes to Rs. 312/-. The appellant pleaded and testified that he spent about Rs. 5,000/- to Rs. 6,000/- towards medicines, treatment and other incidental expenses. In the absence of any documentary evidence, I am inclined to assess expenditure on these counts at Rs. 1,500/- at the rate of Rs. 50/- per day. Considering the

nature of injuries, I am inclined to award Rs. 7,500/-towards pain and suffering. Thus, the appellant is entitled to total compensation of Rs. 27,283/-.

13. In the result, the appeal is allowed with proportionate costs raising the compensation from Rs. 12,000/- to Rs. 27,283/. The respondents shall pay the compensation amount with interest at 12% per annum from the date of petition till payment. The compensation amount awarded and paid under "no fault liability" shall be deducted from the above amount.