
(2014) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1390 of 2007

Cholamandalam M.G. General Insurance Co. Ltd.

APPELLANT

Vs

Bathini Elendra

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2015) 4 ACC 54 : (2015) ACJ 1965 : (2015) 1 ALT 801

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

Bench : Single Bench

Advocate : Kota Subba Rao, Advocate for the Appellant; T. Damodar, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.—The Cholamandalam MG General Insurance Company Limited (2nd respondent in the claim petition) filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Warangal (for short, "Tribunal") in M.V.O.P. No. 8 of 2005 dated 05.03.2007, awarding compensation of Rs. 3,50,000/- (Rupees three lakh fifty thousand only) against the claim of the respondent Nos. 1 to 4 (claimants in the claim petition i.e. wife, two major sons and minor daughter of deceased) of Rs. 5,75,000/- (Rupees five lakh seventy five thousand only), in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act").

2. Heard Sri Kota Subbarao, learned standing counsel for the appellant, Sri T. Damodar, learned counsel for the respondents 1 to 4-claimants. The 5th respondent-owner of the crime vehicle though contested before the Tribunal did not choose to appear before this Court and thus taken as heard the 5th respondent for the absence to decide on merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as submissions during 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 gravely erred in passing pay and recover directions instead of totally exonerating the Insurer, that the Tribunal erred in not considering the factum of the deceased was travelling on the auto trolley which is goods vehicle as unauthorized passenger after so called unloading of the refrigerator and the Tribunal should have seen that the question of pay and recover does not arise for unauthorized passenger of goods vehicle apart from multiplier adopted and earnings of the deceased taken unsustainable and the quantum is excessive. Hence, to exonerate by allowing the appeal.

4. The learned counsel for the claimants contended that for this Court while sitting in appeal there is nothing to interfere with the reasoned award of the Tribunal, hence, to dismiss the appeal confirming the award of the Tribunal.

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

1. Whether the award of the Tribunal fastening joint liability on the insurer with insured to indemnify the insured for the claimant(s) subject to pay and recover directions is unsustainable and requires interference by this Court while sitting in the appeal to exonerate the Insurer from joint liability?

2. Whether the quantum of compensation awarded by the Tribunal is not just and requires interference by this Court and if so with what extent and against whom with what rate of interest and with what observations?

3. To what result?

POINT-1:

6. The facts of the case are that, on 16.03.2004 the deceased B. Nageshwar Rao purchased a refrigerator in Gemeni Electronics, Hanamakonda, for his sister and engaged auto trolley bearing No. AP36V8349 belongs to the 1st respondent insured with the 2nd respondent-appellant covered by Ex. B.2 policy and transporting the same at Ippaguda and while he was returning to Kazipet when the auto reached near Mahila Pranganam at Madikonda, due to rash and negligent driving of the driver of said auto with high speed went on wrong side and dashed against a stationed tractor/trailer and a tree, as a result the deceased who was sitting in the trolley of the auto, sustained grievous injuries and died on the spot, which occurrence is covered by Ex. A. 1 FIR and Ex. A. 4 charge sheet. The learned Tribunal basing on the oral and documentary evidence on record, awarded in all compensation of Rs. 3,50,000/- out of Rs. 5,75,000/- with interest at 7.5% p.a. against both the respondents in the claim petition directing the 2nd respondent-Insurer first to pay and then to recover from the 1st respondent-owner,

7. The fact that the accident was rash and negligent driving of the driver of the goods auto trolley of the 1st respondent insured with the 2nd respondent-appellant covered by Ex. B. 1 policy proved from the evidence of P.Ws. 1 and 2

coupled with Exs. A. 1 FIR and Ex. A. 4 charge sheet apart from Ex. A. 6 MVI report and Ex. A. 5 PM report not in dispute and no way requires interference by this Court.

8. Coming to the liability of the Insurer concerned undisputedly the crime vehicle is a goods i.e. auto trolley i.e. Light Motor Vehicle transport vehicle and the deceased claimed as owner of goods. So far as taking of the refrigerator from the shop of Gemini Electronics, Hanumakonda to the house of his sister at Ippaguda is concerned he is owner/attendant of the goods in the goods vehicle and admittedly the refrigerator was unloaded. When such is the case, he is no longer owner or attendant of goods for return journey as passenger on the goods vehicle but for to say unauthorized passenger. When such is the case, even the owner of the goods can travel, it is only with goods as owner or attendant of the goods and not beyond in a goods vehicle and thereby when the accident occurred after the refrigerator was unloaded at his sister's house and while returning from Ippaguda towards Hanumakonda by travelling in the goods vehicle, the question of fastening liability against the Insurer does not arise much less even to pay and recover liability as per the settled expressions that the policy of the goods vehicle no way covers to carry passengers except the employees others than driver, not exceeding six in number under the Workmen Compensation Act at best and Section 147 not provided for any statutory liability to the passengers of goods vehicle if no additional premium paid to cover such risk vide decisions in National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , National Insurance Co. Ltd. Vs. Ajit Kumar and Others, , New India Assurance Co. Ltd. Vs. Asha Rani and Others, , Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., Ramashrya Singh Vs. New India Assurance Company Limited 2003 ACJ 1550, New India Insurance Company Limited Vs. Vedawathi 2007 ACJ 1043, National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, , Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , Sanjeev Kumar Samrat Vs. National Insurance Company Ltd. and Others, National Insurance Company Ltd. Vs. Savitri Devi and Others etc., . Thus, said finding of the Tribunal on fixing joint liability against the Insurer to the extent of pay and recover even the risk not covered by policy to travel after unloading of goods is liable to be set aside. Accordingly, point No. 1 is answered.

Point No. 2:

9. So far as the quantum of compensation is concerned, what the Tribunal awarded of Rs. 3,50,000/- by assessing the earnings of the deceased as on the date of accident 16.03.2004 from the claimants out of 4, even two sons not dependents but for wife and unmarried daughter, to deduct 1/3rd towards personal expenses, as rightly did so by the Tribunal by assessing the earnings at Rs. 3,000/- per month for no proof of earnings by applying 13 multiplier by taken the age above 46 years, and the entitlement of loss of consortium, funeral expenses and loss of estate as per Rajesh and Others Vs. Rajbir Singh and Others, it no way requires interference as it comes more but for no cross-

objections to increase vide decision in Ranjana Prakash and Others Vs. Divisional Manager and Another, . Accordingly, point-2 is answered.

Point No. 3:

10. In the result, appeal is partly allowed by setting aside the pay and recover liability against the Insurer by exonerating the Insurer from liability, by fixing the entire liability on the owner of the vehicle to the claimants. It is needless to say the amount in deposit made by the Insurer, save to the extent already permitted if any of the claimants to withdraw, is entitled to claim back by filing cheque petition by the Insurer and so far as the amount out of it permitted by this Court to withdraw by the claimants concerned, the insurer is entitled to recover the same from the owner of the vehicle. There is no order as to costs.

11. Miscellaneous petitions, if any pending in this appeal, shall stand closed.