
(1996) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : A.A.O. No. 1464 of 1989 & Appeal Against Order No. 1464 of 1989

Digumarthi Subba Rao and Another

APPELLANT

Vs

Y. Sambasiva Venkata Subba Rao and Another

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 96(2)

Citation : (1996) 2 ALT 54

Hon'ble Judges : Neelam Sanjiva Reddy, J

Bench : Single Bench

Advocate : K. Ramesh Chowdary, for the Appellant; V.V. Ramanadham, for the Respondent

Final Decision : Allowed

Judgement

Neelam Sanjiva Reddy, J.—This appeal is directed against the order of the Motor Accidents Claims Tribunal-District judge, Guntur, passed on 3rd April, 1989 in O.P.No. 34 of 1987.

2. The facts culminating in this appeal and necessary for its disposal briefly stated are that Digumarthi Hanumantha Rao, aged 22 years and graduate in mechanical engineering earning Rs. 2,500/- per month in Kalyani Cement Factory, was travelling on the scooter AIK 2436 along with pillion rider G. Kishore Kumar from Macherla to Piviuguralla. On their way, tractor ATC 2620 with trailer APG 9625 driven in a rash and negligent manner hit them resulting in grievous injuries to Hanumantha Rao and his consequent death. Hanumantha Rao's father and mother, aged about 46 years and 40 years respectively, filed the above O.P. claiming a total compensation of Rs. 1,50,000/- from the owner and insurer of the tractor and trailer involved in the accident.

3. The owner and insurer resisted the claim of the petitioners and the insurer took specific defence that the driver of the tractor was not holding a valid driving licence and it was not liable to indemnify the owner against the liability towards

the claimants in view of Section 96(2) of the Motor Vehicles Act, 1939 (for short "the Act"). The Tribunal, after considering the evidence on record, awarded a total compensation of Rs. 50,000/- against the owner only and dismissed the petition as against the insurer finding that the driver of the tractor was not holding valid driving licence by the date of accident as pleaded by the insurer. Aggrieved by the adverse findings, claimants preferred the appeal.

4. Learned Counsel for the appellants contends that the Tribunal arbitrarily awarded the compensation of Rs. 50,000/- and the said assessment is not based on evidence or recognised legal principles. A perusal of the order under appeal amply makes it clear that there is any amount of truth in the submission made by the counsel. Oral and documentary evidence adduced for the claimants establish that the deceased was earning Rs. 2,500/- per month. The deceased being very young, his income was more likely to increase, but not decrease. Learned counsel on both sides submit that considering the age of deceased's parents, the appropriate, multiplier is 12.79 for capitalizing the loss of dependency by taking two-thirds of the annual income of the deceased as multiplicand. Loss of dependency calculated accordingly comes to Rs. 2,55,600/- but the claim is restricted to Rs. 1,50,000/- by the petitioners.

5. Learned counsel for the appellants submits that the Tribunal erred both factually and legally in accepting the specific defence of the insurer that the driver of the tractor was not holding a valid driving licence and the insurer is not liable to pay any compensation u/s 96(2) of the Act. He relied on a decision of this Court in *The Oriental Fire and General Insurance Company Limited, Karimnagar v. Pavan Kumar and other*¹ wherein K. Ramaswamy, J. as he then was, held:

"3. u/s 96 (2) (b)(ii) of the Motor Vehicles Act (Act 4 of 1939) for short "the Act", the insurer is entitled to raise all the plea's open to it to defend the claim for compensation including the ground that the vehicle was driven by a person who was not duly licensed. Therefore, it is open to Reinsurance Company to raise the plea that the second respondent was not possessed of a valid licence. Then the question is whether the appellant has discharged the burden. Sri Mangachary is right in contending that if the appellant has been in possession of evidence and it withheld the same, an adverse inference could be drawn against the appellant. But here it is one of the pleas taken by the appellant. The specific plea taken by the appellant is that the second respondent is not possessed of a valid licence on the date when the accident had occurred. Therefore, the burden is on the Insurance Company to establish that fact by adduction of material evidence in that regard viz., the licence issued by the competent authority and its validity thereof. If some evidence has been adduced by the appellant to show that the driver is not holding a valid licence as on the date of accident, then, necessarily the burden shifter on the driver or the claimant to establish that the driver is having a valid licence. When the appellant has not placed any material before the Court, then it is a case of non-adduction of any evidence to substantiate its plea.

In an analogous situation, the Supreme Court had to consider a case in *Bishan Devi v. Sirbaksh Singh* : [1980]1SCR300 Kailasam, J. speaking for the Court has considered the circumstances and held at Para 12 thus: "Apart from making the averment in his written statement the insurer did not take any steps to establish that the vehicle was driven by a person who was not properly licensed.....It is the duty of the insurer to have substantiated the plea....." Thus the Supreme Court has squarely put the question that the person who raised the plea viz., the insurer, the burden is on the insurer to establish by adduction of evidence that the driver is not having a valid licence. In similar circumstances, the *Bhairon and Others Vs. Nandram and Others*, has considered the question where some plea was taken by the Insurance Company and no evidence was adduced to prove that the driver was not having a valid licence, it was held that the Insurance Company having failed to adduce evidence in disproof of the fact that the driver is not having a valid licence as on the date of accident the claimant is entitled to compensation claimed as against the Insurance Company. Thus, it is well settled that if a specific plea is taken by the Insurance Company u/s 96(2) (b) (ii) it is for the insurer to substantiate the same by adduction of evidence as regards the validity of the licence possessed of by the driver. Mere taking a plea does not amount to proof of the allegation. It is only an averment. Unless it is substantiated by adduction of acceptable evidence the averment or plea cannot be said to have been proved. Unless there is proof of it the question of disproof by the claimant or the driver does not arise."

6. In *United India Insurance Company Limited, Kurnool v. Madiga Thappeta Ramakka and others*², G. Radhakrishna Rao, J. observed:

"Mere mention in the criminal court's judgment about the driver not having a licence, much less a valid driving licence is not sufficient. It is well established legal principle that the findings given in criminal court judgments cannot be taken aid and cannot be taken advantage in civil matters. The best method is to summon the driver to produce the driving licence and also to take appropriate steps to examine him. If the driver is summoned and if he had produced the driving licence it is sufficient. If he did not respond to the summons and did not appear nor did he produce the driving licence, an adverse inference can be drawn that he was not holding a valid driving licence. It is also the duty of the Insurance Company to summon the R.T.A. officials to produce the driving licence as the R.T.A. who issues the driving licence keeps record of the licence issued and renewed by it and the Insurance Company could have got the evidence produced to substantiate its defence. Either of the above two steps has not been taken by the Insurance Company. The Insurance Company did not take any effective steps to discharge the burden. The mere filing of the report of the Administrative (sic. Investigation) Officer, without examining him, does not absolve the responsibility of the Insurance Company in discharging the burden. The Insurance Company has not discharged its burden by wading legal evidence. Under the umbrella of Ex.B-1 policy it cannot fake shelter and claim that it has discharged its burden cast upon it."

7. Coming to the facts of this case, the specific condition of Ex.13-2 policy, the breach of which was pleaded, runs:

"Driver : And of the following

(a)

(b)

Provided that the person driving holds a valid driving licence at the time of the accident or has held a permanent driving licence (other than a learner's) and is NOT disqualified from holding or obtaining such a permanent licence."

8. The breach of the above condition squarely falls u/s 96(2)(b)(ii) of the Act. In support of defence taken by the insurer, R.W.I, who was working as Assistant at Guntur branch of the insurer, testified that the driver of the tractor had no valid driving licence by the date of accident. Evidently, he had no personal knowledge about the said fact and he did not reveal the basis for his statement. Admittedly, the insurer had not taken steps to examine the driver of the tractor or any official of the concerned Road Transport Authority where the record relating to the driving licence of the driver of the tractor was available.

9. Learned counsel for the insurer attempted to lay basis for his defence on Ex.A-8, a certified copy of accident report prepared by Motor Vehicles Inspector, in respect of the present accident. Column-17 of Ex. A-8 deals with the particulars of driver's licence. It is seen from it that the driver of the tractor held licence No. 5422/K/85 ALA Kakinada for light motor vehicles only and it was valid upto 4-6-1988. It is further seen from Columns 14 and 17 in Ex.A-8 that VCR No.114 dated 13-5-1986 was issued against the owner and driver for not holding valid permit and for not having valid driving licence and that it was compounded by paying Rs. 500/-. From the above particulars in Ex.A-8 and considering the nature of the tractor, we can safely infer that the driver was duly licensed to drive the tractor and compounding in VCR No. 114 dated 13-5-1986 might be for not holding the valid permit for the tractor or that the driver might not have paid the required fees for driving the vehicle as an employee. In the absence of any attempt on the part of the insurer to establish its defence by summoning the concerned persons and documents, I am inclined to hold that the driver of the tractor was duly licensed and that the insurer has thoroughly failed to establish the exclusion clause against the claimants.

10. At the end of the arguments, Sri V.V. Rarnanadham, learned counsel for the insurer, submits that the matter may be remitted back to the Tribunal to enable the insurer to take steps to summon the concerned persons and documents to arrive at just and correct decision in the matter. I am unable to accept this submission in view of the fact that the insurer being a corporation, was well aware of its duties and responsibilities in respect of the claim of the petitioners and had ample opportunity to adduce evidence in support of its defence.

11. In the result, the appeal is allowed with costs raising the compensation

amount from Rs. 50,000/- to Rs. 1,50,000/- with interest at 12% per annum from the date of petition till the date of payment. The owner and insurer are jointly and severally liable to pay the above compensation amount to the claimants. The compensation shall be apportioned equally between the two claimants. The compensation shall be paid deposited as per the guidelines detailed by the Supreme Court in Kerala State Road Transport Corporation v. Mrs. Susamma Thommas