
(2010) 07 AP CK 0074

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1027 of 2010

E. Rajeswari and Others

APPELLANT

Vs

T.S. Sekhar and Another

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2011) 1 ALD 48

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Govind Reddy, for the Appellant; Srinivasa Rao Vutta, SC for R 2, for the Respondent

Judgement

L. Narasimha Reddy, J.—The Appellants filed M.V.O.P. No. 96 of 2008 before the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tirupathi (for short "the Tribunal"), claiming a sum of Rs. 5,00,000/-, as compensation, on account of the death of Sri E. Ankaiah, husband of Appellant No. 1, father of Appellant No. 2 and son of Appellant No. 3. It was stated that Ankaiah was proceeding on a bicycle on 19-09-2007 at 6.00 p.m., in Puttur Village on Puttur-Tirupathi Road and a Car bearing No. AP-03-AC-3253, owned by Respondent No. 1 and insured with Respondent No. 2, came in a rash and negligent manner and hit him. Ankaiah was shifted to Community Health Centre, Puttur and there, he was given first-aid. When he was being shifted to a Government Hospital, at Tirupathi, he succumbed to injuries, on the way. Crime No. 96 of 2007 was registered by Puttur Police Station against the driver of the vehicle and post-mortem was conducted on the deceased.

2. The Appellants pleaded that the deceased was earning a sum of Rs. 150/- per day and he was aged 25 years, when he died. Respondent No. 1 remained ex parte. The M.V.O.P. was opposed by Respondent No. 2. It was pleaded that there did not exist any valid insurance policy as on the date of the accident. It was also alleged that the driver of the vehicle did not possess valid driving licence.

3. Through its order, dated 19-03-2010, the Tribunal awarded a sum of Rs. 4,41,500/- against Respondent No. 1 and exonerated Respondent No. 2 from liability. Hence, this appeal.

4. Sri P. Govind Reddy, learned Counsel for the Appellants, submits that though the policy, Ex.B2, commenced from 21-09-2007, i.e., two days after the occurrence of the accident, there exists a different policy in respect of the vehicle, covering the risk from 19-12-2006 to 18-12-2007. He contends that Respondent No. 2 ought to have brought that information to the notice of the Tribunal. The learned Counsel further submits that the driving licence held by the driver of the vehicle enabled him to drive it, and there was no violation of the policy conditions.

5. Sri Srinivasa Rao Vutta, learned Standing Counsel for the 2nd Respondent, on the other hand, submits that the Appellants did not take the plea that there existed another Insurance Policy, covering the same vehicle, and that on verification it is found that the one, relied upon by them, at the appellate stage, is also genuine. He contends that even assuming that there existed a valid coverage policy, the fact remains that the Tribunal recorded a clear finding to the effect that the vehicle was being used for commercial purposes, and the licence held by the driver did not enable him to drive such vehicles.

6. There is no dispute that in an accident that took place on 19-09-2007 at Puttur-Tirupathi road, E. Ankaiah died on account of being hit by the car, owned by the 1st Respondent and insured with the 2nd Respondent. On behalf of the Appellants, PWs 1 to 3 were examined and Exs.A-1 to A-5 were filed. On behalf of the Respondents RWs 1 and 2 were examined and Ex.B-1, the extract of driving licence, and Ex.B-2, xerox copy of the Insurance Policy were filed.

7. The Tribunal assigned two reasons for not making the 2nd Respondent liable to pay the compensation. The first is that there did not exist valid insurance policy. The second is that the driver of the vehicle did not possess valid driving licence.

8. Ex-B-2 shows that the vehicle was covered with insurance, between 21-09-2007 and 18-12-2007. The accident took place on 19-09-2007. Therefore, the 2nd Respondent could not have been held liable to pay the compensation. The finding of the Tribunal to that effect cannot be found fault with.

9. The Appellants filed C.M.P. No. 2900 of 1997 under Rule 27 of Order 41 Code of Civil Procedure, with a prayer to receive certified copy of the Insurance Policy, in respect of the same vehicle. This was issued in favour of Sri T.S. Sekhar, the 1st Respondent herein, covering the period from 21-09-2007 to 18-12-2007. Learned Standing Counsel for the 2nd Respondent was requested to find out as to whether the said policy is genuine. After verification with his client, learned Counsel said that the policy is genuine. Therefore, it can be received as additional evidence, as Ex.B-3, straightaway. There is no necessity to send the matter to the Tribunal, for this limited purpose. Once it emerges that the vehicle

was covered by the policy, as on the date of the accident, the 2nd Respondent would be liable to insure the 1st Respondent, in case the other ingredients are proved.

10. So far as the second aspect is concerned, the Tribunal held that the driving licence Ex.B-1 was only for light motor vehicles and that the driver was not permitted to drive a transport vehicle. The view taken by the Tribunal cannot be sustained. The reason is that the connotation "light motor vehicle" is relevant, in the context of the size and make of the vehicle, and not the use, to which it is put. The expression "transport vehicle", on the other hand, deals with the use and not the size of the vehicle. For instance, even a small vehicle, like, Autorickshaw can be treated as a transport vehicle, because of its use, whereas a big sedan or car can be used as private vehicle.

11. The LMV licence issued to a driver enables him to drive the vehicle of that category. It is immaterial whether such vehicle is being used as purely for private purposes, or as a transport vehicle. Admittedly, the vehicle involved in the accident was a light motor vehicle, and Ex.B-1 is a LMV licence. Therefore, both the reasons assigned by the Tribunal cannot be sustained.

12. The Tribunal has undertaken the exercise to ascertain the dependency of the Appellants on the deceased, and said to be the same at Rs. 4,32,000/-. It awarded Rs. 5,000/- towards consortium, Rs. 2,000/- towards funeral expenses, and Rs. 2,500/- as loss of estate. In all, a sum of Rs. 4,41,500/- was awarded, only against the 1st Respondent. That finding is not challenged.

13. Hence, the C.M.A is allowed, and the 2nd Respondent herein is liable to pay the compensation awarded by the Tribunal.

14. There shall be no order as to costs.