

(2004) 04 AP CK 0104
In the Andhra Pradesh High Court
Case No : CMA No. 620 of 1999

Goli Veera Reddy

APPELLANT

Vs

Yerakareddy Yesu Reddy and Others

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (2004) 4 ALD 447

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Y.V. Ravi Prasad, for the Appellant; A. Malathi, for the Respondent

Judgement

C.Y. Somayajulu, J.—This appeal is preferred by the claimant in O.P. No. 208 of 1994 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari at Eluru, dissatisfied with the compensation awarded to him by the Tribunal for the death of his son in an accident that took place on 8.11.1993, allegedly due to the rash and negligent driving of the first respondent while driving scooter belonging to the second respondent, and insured with the third respondent, with the deceased as his pillion rider, and dismissing his claim against the third respondent. First respondent chose to remain ex parte. Second respondent filed a counter denying the allegations in the petition and alleging that the deceased accompanied the first respondent to Chintalapudi and died due to his own negligence and that the compensation claimed is highly excessive. Third respondent filed a counter denying the allegations in the petition and putting the petitioner to proof of all the allegations therein.

2. In support of his case, appellant examined himself as P.W.1 and another witness as P.W.2 and got marked Exs.A.1 to A.5. No oral or documentary evidence was adduced by the second respondent. Third respondent did not adduce oral evidence but marked Ex.B.1 by consent.

3. The Tribunal, having held that the accident occurred due to the rash and

negligent driving of the first respondent while driving the scooter of the second respondent, awarded Rs. 41,000/- as compensation to the appellant against the second respondent, exonerating the third respondent of its liability, on the ground that pillion rider is not covered by Ex.B-1, which is an Act policy. Hence, this appeal by the claimant.

4. Heard, both the sides.

5. Since second respondent failed to adduce evidence to counter the evidence of P.W-2, the Tribunal held that the evidence of P.W-2 can be accepted and so it held that the accident occurred due to the rash and negligent driving of the first respondent. This is not the correct way of appreciating the evidence of a witness. If the other evidence adduced by the appellant shows that P.W-2 could not have been a witness to the accident, merely because second respondent did not adduce evidence to establish how the accident took place, P.W2 would not become a witness to the accident. Burden of proof to establish that the accident took place due to the rash and negligent driving of the first respondent is on the appellant. So it is for the appellant to establish that first respondent in fact was driving the scooter at the time of accident. If P.W-2 in fact was a witness to the accident, police would not have failed to show him as an eye-witness in the charge-sheet. Admittedly, P.W-2 is not cited as a witness in the charge-sheet. So it is for the appellant to establish as to how he came to know that P.W-2 was a witness to the accident and examined him as a witness on his behalf. Significantly appellant did not furnish a list of witnesses proposed to be examined by him in this case and brought P.W-2 as a witness to the accident and examined him. Ex.A-1, F.I.R. issued in connection with the accident does not show who was driving the scooter at the time of accident. No doubt police charge-sheeted the first respondent for an offence under Section-304-A I.P.C. for the death of the deceased. But charge-sheet per se is no evidence of the contents therein. Nobody cited as a witness by the police in Ex.A-5 charge-sheet was examined by the appellant. From the cross-examination of P.W-2 it is easy to see that he is well known to the appellant. So P.W-2 with a view to help the appellant in obtaining compensation for the death of the deceased could have agreed to give evidence as a witness to the accident. In spite of all the above, since this is an appeal by the claimant seeking more compensation than awarded by the Tribunal and since second respondent, the owner of the vehicle against whom an award is passed, chose to remain ex parte in this appeal, in spite of an adverse finding against him on issue No. 1 relating to rash and negligent driving of the first respondent, to whom he allegedly entrusted the scooter involved in the accident, and did not file cross-objections, I do not wish to interfere with the finding of the Tribunal on issue No. 1.

6. The deceased, admittedly, was unmarried at the time of his death. Appellant who is the sole claimant is the father of the deceased. The Tribunal on the ground that there is no evidence on record to show that the deceased was vending milk, as alleged by the appellant, and since no licence in the name of the

deceased issued by the local authority was produced and since the deceased, a graduate would not have gone for coolie work, holding that the deceased was a non-earning member awarded Rs. 41,000/- as compensation to the appellant. For the reasons mentioned by the Tribunal I do not find any ground to interfere with the finding of the Tribunal that the deceased was a non-earning member. After securing employment the deceased had he been alive would have got married and begotten children. So he would be spending the major part of his income for the maintenance of his wife and children. Appellant who claimed himself aged 45 years at the time of the death of the deceased would not be dependent on the income of the deceased. For the above reasons and since the accident occurred in 1993, the compensation awarded by the Tribunal to the appellant for the death of the deceased appears to be just and reasonable and so I hold that appellant is entitled to Rs. 41,000/-as compensation for the death of the deceased.

7. On the basis that Act policy does not cover the risk of pillion rider the Tribunal, exonerated the third respondent from its liability. In *M. Laxmi and Ors. v. M. Yadi Reddy and Anr.*, CMA No. 2512 of 1999, dated 19-4-2004, while considering the question whether insurer of a two wheeler is liable to pay compensation for the death or injuries of a pillion rider, under an Act policy, I held that the Act policy covers the liability of the pillion rider also. The same reasons hold good in this case also and so I hold that the third respondent also is liable to pay the compensation payable to the appellant.

8. Since there is no reliable evidence on record, that first respondent who was held to be driving the scooter of the second respondent at the time of accident, was having valid licence, in view of the ratio in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , third respondent on establishing that second respondent entrusted the scooter to the first respondent knowing that he has no driving licence can recover the amount paid by it to the appellant from the second respondent. The point is answered accordingly.

9. In the result, the appeal is allowed in part and an Award is passed for Rs. 41,000/- in favour of the appellant against the respondents jointly and severally with interest at 12% per annum from the date of petition till the date of deposit into Court with proportionate costs before the Tribunal. Rest of the claim of the appellant is dismissed without costs. Third respondent on establishing that the first respondent was not having a valid licence by the date of accident i.e., on 8-11-1993 is entitled to recover the amount paid by it to the appellant from the second respondent. Parties are directed to bear their own costs.