

(2006) 06 AP CK 0047
In the Andhra Pradesh High Court
Case No : CMA No. 1856 of 1997

Irusumalla Varalakshmi and Others

APPELLANT

Vs

Chilakapati Raju and Others

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 10

Citation : (2006) 6 ALD 475 : (2006) 6 ALT 706

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

Bench : Single Bench

Advocate : B.V. Rammohana Rao, for the Appellant; P. Vasudeva Reddy, for Respondent Nos. 1 and 2 and A.V.K.S. Prasad, for the Respondent

Judgement

C.Y. Somayajulu, J.—The case, in brief, of the appellants who are the widow and children of Irusumalla Rama Rao (the deceased) is that the deceased, who was aged about 45 years and was working as a Grade-III Clerk in Food Corporation of India, died in a motor vehicle accident due to the rash and negligent driving of the Tractor and Tractor i.e. ATP 3292 with and ATP 3899 belonging to the second respondent and insured with the third respondent, due to its rash and negligent driving by the first respondent and so they are entitled to compensation of five lakh rupees from the respondents.

2. Respondents 1 and 2 filed a common counter contending that the Tractor and Tractor bearing Nos. ATP 3292 and ATP 3899 did not pass through the scene of accident on the date of the accident and since the said Tractor was not involved in the accident resulting in the death of the deceased, they are not liable to pay any compensation to the appellants.

3. Third respondent filed a counter admitting insurance of the tractor and tractor said to have been involved in the accident with it and putting the appellants to proof of the allegations in the claim petition.

4. In support of their case, appellants examined 3 witnesses as P.Ws.1 to 3 and

marked Exs.A.1 to A.5. In support of their case, respondents 1 and 2 examined 4 witnesses as R.Ws.1 to 4 and marked Exs.X.1 to X.4. No oral evidence was adduced on behalf of the third respondent, but Ex.B.1 was marked by consent on its behalf.

5. Holding that the tractor and trailer of the second respondent did not cause the accident resulting in the death of the deceased the Tribunal dismissed the claim petition of the appellants. Hence, this appeal by the claimants.

6. The points for consideration are

(1) Whether the accident involving the deceased took place due to the rash and negligent driving of the Tractor belonging to the second respondent by the first respondent?

(2) To what compensation, if any, are the appellants entitled to?

7. The main contention of the learned Counsel for appellants is that the Tribunal by ignoring the well settled rule that no amount of evidence can be looked into on a plea not taken in the pleadings was in error in accepting the evidence of R.Ws.2 to 4, though there is no plea in the counter filed by respondents 1 and 2 that the Tractor and Trailer of the second respondent were in the workshop on the date of accident and placed strong reliance on *Gulabrao Balwantrao Shinde v. Chhabubai Balwantrao Shinde* AIR 2002 SCW 4587, in support of his contention that the Tribunal was in error in rejecting the evidence of P.W.3 and accepting the evidence of R.Ws.2 to 4. The contention of the learned Counsel for respondents 1 and 2 is that since the Tribunal gave cogent reasons for its conclusion that P.W.3 is not an eye-witness to the accident and accepting the evidence of R.Ws.2 to 4, there are no grounds to interfere with the finding of the Tribunal.

8. Ex.A.1, certified copy of the F.I.R., issued in connection with the accident, shows that it was given in the police station at 7.00 a.m., on 27.11.1993 by one Manda Eswara Prasad, a colleague of the deceased, stating that the deceased left the office of the Food Corporation of India for his house at about mid night on 26.11.1993 and that at about 1.00 a.m., when Boganti Surareddy came and informed him about the deceased being involved in an accident and lying on the road, he and some other members of the staff in the office and Sekhar Reddy went to the scene of accident and found the deceased lying opposite to the cattle shed of Veerraju on the road margin and thought that some vehicle must have dashed against him and caused his death. Ex.A.2, certified copy of the charge-sheet filed by the police against the first respondent in connection with the accident, shows that N. Krishna Babu, who is examined as P.W.2, was cited as L.W.3 along with Tondapu Lakshminarayana Reddy as eyewitnesses to the accident. In view of the fact that the charge-sheet filed by the police shows that P.W.2 was an eye-witness to the accident, prima facie it has to be taken that he was a witness to the accident. If something is elicited during cross-examination of P.W.2 to establish that he, in fact, was not an eye-witness to the accident only can his evidence be rejected. The evidence of P.W.2 is that when he and the

deceased were proceeding on their respective scooters, the deceased who was ahead of him by about 100 feet was dashed against by a Tractor and so the deceased fell down from the scooter and the driver of the Tractor stopped the Tractor and gave succor to the deceased and later ran away from that place and that he noted the number of the Tractor as APP 3292 and the Tractor as 3899 and that the accident occurred only due to the rash and negligent driving of the driver of the Tractor. During cross examination he stated that he did not give any police report about the accident and that for the first time he is giving evidence about the accident before the Court and that one M. V. Prasad gave a report to the police and that the deceased is not related to him and that he did not inform the number of the Tractor and Tractor to the wife of the deceased and did not try to take the deceased to the hospital and that he does not know whether any criminal case is filed against the driver of the Tractor and that he did not receive summons from the Court and that he does not know the pleas taken by the accused in the criminal case and denied the suggestion that he is giving false evidence. He admitted that the report given to the police by Prasad is true. The Tribunal disbelieved the evidence of P.W.2 that he was a witness to the accident on the ground that he did not lodge a complaint with the police or furnish the particulars of the vehicle involved in the accident to M.V. Prasad who gave the complaint and also on the ground that he admitted that the report given by Prasad to police is true. Since public generally do not go to police station to give report about the accidents they saw, for fear that they may be cited as witnesses in criminal cases resulting in their going round the Court for several hearings, P.W.2 not giving a police report about the accident, per se is not a ground for holding that he was not a witness to the accident. P.W.2, who stated that he went home from the scene of accident would not have contacted M.V. Prasad or given details of the accident to him. Ex.A.1 report given by M. V. Prasad does not disclose that he came to know about the accident through P.W.2. When he (P.W.2) met M.V. Prasad after the accident was not elicited during the cross examination of P.W.2. In the above circumstances, P.W.2 can have no possibility to give the details of the vehicle that caused the accident to M. V. Prasad and so I find no grounds to disbelieve the evidence of P.W.2 that he was a witness to the accident.

9. In view of the evidence of R.Ws.2 to 4, the Tribunal held that the Tractor belonging to the second respondent could not have caused the accident. The plea taken by respondents 1 and 2 in their counter reads-

On the date of the alleged accident, i.e., 26/27-11-1993, the Tractor bearing Registration NoATP 3292 with Tractor ATP 3899 did not at all pass through the place where the accident was said to have taken place. The police in connivance with the petitioners and the persons who are enmity to the family of these respondents falsely implicated the above vehicles.

(underlining mine)

which implies that the Tractor, on the day of accident, was roadworthy and was

plying elsewhere but not near the scene of accident.

10. The evidence of R.W.2 (first respondent) who is alleged to have caused the accident, is that he is employed by the second respondent as driver of the Tractor and Tractor bearing Nos.ATP 3292 and ATP 3899 meant for agricultural purpose and that he did not cause any accident on the intervening night of 26/27-11-1993 and that in fact from about three days prior thereto 26.11.1993 the Tractor and Tractor were in a shed at Ramachandrapuram for repair to the gear box of the tractor and that they were in the shed for more than 10 days and that the police seized the Tractor and Tractor when they were at Chodavaram. During cross examination he admitted that he, in his counter, did not mention that the Tractor and Tractor were in the workshop at the relevant time or about the police seizing the Tractor and Tractor when they were at Chodavaram, and denied the suggestion that the accident occurred only due to his rash and negligent driving.

11. R.W. 3 is a mechanic. His evidence is that the Tractor and Tractor belonging to the second respondent were brought to his shed on 23-11-1993 for over-hauling of the differential and some minor repairs to the engine, for which second respondent purchased spare parts, and that it took 10 days for him to attend to those repairs. During cross-examination he stated that there is no documentary evidence to show that he attended to the repairs of the Tractor and Tractor of the second respondent and denied the suggestion that he is giving false evidence to help the second respondent.

12. R.W.4 is a dealer of Automobile spare parts. His evidence is that second respondent is the owner of the Tractor and Tractor bearing Nos.ATP 3292 and ATP 3899 and that Janakiramayya purchased spare parts for gearbox repair on 24-11-1993, 25-11-1993 and 26-11-1993 under the originals of Exs.X.2 to X.4 bills in Ex.X. 1 bill book.

13. Ex.X.I bill book contains the duplicate copies of 200 bills, originals of which would be given to the purchasers of the spare parts. From out of all those 200 bills, only bill bearing No. 171 has the number of the vehicle without mentioning the name of the purchaser. In fact, many of those duplicate bills do not contain the names of the purchaser. From a close and careful look into Exs.X.2 to X.4 duplicate bills available at pages as Bill Nos. 123, 125 and 128, shows that R.W.I purchased some spare parts thereunder and that "ATP 3292" found therein is written by using a different carbon paper i.e., different from the one that was used when the bill was originally prepared. So, an inference can be drawn that the number of the vehicle in those bills was incorporated therein to use it as a defence in this case. Exs.X.2 to X.4 show that spare parts mentioned therein were purchased by R.W.I, i.e. the son of second respondent. From the entries in Exs.X.2 to X.4 it cannot be said that the parts purchased thereunder are useful only to a tractor but not any other vehicle. There is no evidence on record to show that R.W.I, does not own a vehicle. Therefore, merely because of Exs.X.2 to X.4, it cannot be said that the Tractor of the second respondent was under

repair on the dates mentioned therein and was not road worthy. Even assuming that Exs.X.2 to X.4 are the bills relating to purchase of spare parts for the Tractor belonging to the second respondent, since they show the purchases were made on 24-11-1993, 25-11-1993 and 26-11-1993 respectively and since the accident occurred during the intervening night of 26/27-11-1993, it cannot be said that there was no scope for the Tractor of the second respondent being involved in an accident in the night of 26-11-1993.

14. The evidence of R.W.3 that the Tractor and Tractor of the second respondent were in his workshop for a period of 10 days from 23-11-1993 cannot be accepted because he did not produce any documentary evidence in support of his statement, and since overhauling of the differential and minor repairs to the engine would not take 10 days for repair. According to him, the Tractor was brought to his shed on 23.11.1993. Even assuming that the spare parts mentioned in Exs.X.2 to X.4 were purchased for the Tractor of the second respondent the Tractor could have been repaired and put on road by the evening of 26-11-1993.

15. For the above reasons and since respondents 1 and 2 did not specifically allege in their counter that the Tractor was in workshop by the date of the accident, and since evidence on pleas not taken in the pleadings cannot be taken into consideration as held in Gulabrao Balwantrao Shinde case (supra) the evidence of R.Ws.2 to 4 that the Tractor of the second respondent was in the workshop by the date and time of the accident cannot be believed or accepted. One significant thing is R.W.2 stated that the Tractor and Tractor of the second respondent are meant for agricultural operations of the second respondent, her son and son-in-law. The evidence of R.W.2 also shows that the Tractor was seized at Chodavaram, which is in Visakhapatnam District. Why a Tractor meant for the agricultural operations of the second respondent, her son and son-in-law who live in East Godavari District was taken to Chodavaram is not explained by R.W.2 in his evidence. As per Section 10 of A.P. Motor Vehicles Taxation Act, 1963, vehicles solely used for the agricultural operations of the owner in respect of the land in his personal cultivation is exempt from tax if that vehicle is used within 15 miles radius. Second respondent did not produce the permit of the Tractor which would have revealed whether it can be used for agricultural purpose only or for other purpose. In view of the evidence of R.W.2 it can be presumed that the Tractor was having a permit for agricultural purpose only. So, it cannot go out beyond 15 miles radius. Since the Tractor and Tractor were seized at Chodavaram a presumption that the Tractor and Tractor were attempted to be screened after its involvement in the accident can be drawn.

16. In the above circumstances, the evidence of P.W.2 that he was a witness to the accident need not be disbelieved and so I hold that the accident resulting in the death of the deceased took place only due to the rash and negligent driving of the Tractor by the first respondent. The point is answered accordingly.

Point No. 2:

17. The Tribunal held that the appellants would have been entitled to a compensation of Rs. 1,88,020/- for the death of the deceased. The appellants are claiming higher compensation than that was arrived at by the Tribunal.

18. Ex.A.5, salary certificate of the deceased, shows his gross salary was Rs. 4,150/- while his take home salary was only Rs. 1,869-65ps. The deductions from his salary relate to GPF, Vehicle Advance, House Building Advance, LIC, GIS, Income Tax, etc. So, in view thereof, the Tribunal took the contribution of the deceased to the appellants as Rs. 1,300/- per month. In my considered opinion, there are no grounds to interfere with the said amount adopted by the Tribunal.

19. Appellants did not adduce reliable evidence regarding the age of the deceased who was an employee in Food Corporation of India, but as Ex.A.3 Post-mortem Examination Report of the deceased shows his age as 45 years, the Tribunal took his age as 45 years and arrived at the pecuniary damages as Rs. 1,63,020/- by applying the multiplier "10.45" as per the ratio in Bhagwandas Vs. Mohd. Arif, . Since the accident occurred in 1993, the multiplier applied by the Tribunal is the appropriate multiplier.

20. The Tribunal awarded Rs. 10,000/-towards loss of consortium to the first appellant and as per the ratio in Y. Varalakshmi and Others Vs. M. Nageswara Rao and Others, , awarded Rs. 15,000/-towards loss of expectation of life, pain and suffering and loss of amenities, which is reasonable and adequate. Therefore, I also hold that the appellants are entitled to Rs. 1,88,020/-as compensation for the death of the deceased. The point is answered accordingly.

21. In the result, the appeal is allowed in part. An award is passed for Rs. 1,88,020/-with interest at 9% p.a. from the date of filing of this appeal till the date of deposit into the Court with proportionate costs in the Tribunal. Rest of the claim is dismissed without costs. From out of the said amount, first appellant is entitled to Rs. 69,340/- and interest thereon and costs. Appellants 2 and 3 are each entitled to Rs. 59,340/- and interest thereon. Parties are directed to bear their own costs in this appeal.