

(1987) 03 AP CK 0034
In the Andhra Pradesh High Court

K. Trisula Devi and Others

APPELLANT

Vs

N. Nageswara Rao and Others

RESPONDENT

Date of Decision : 12-03-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2), 96(2)

Citation : (1988) 63 CompCas 115

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : D. Prasanna Kumari, for the Appellant; E. Ella Reddy, for the Respondent

Judgement

P.A. Choudary, J.—This CMA is filed u/s 110D of the Motor Vehicles Act against the order and judgment of the Motor Accidents Claims Tribunal (District Judge), Khammam. The first appellant is the wife of the deceased. The second and the third appellants are the children of the deceased, being minors, represented by the first appellant. The first respondent in this appeal is the driver. The second respondent is the owner of the jeep bearing No. ADY 411 (hereinafter called "the insured"). The third respondent is the Oriental Fire and General Insurance Co. Ltd., Hyderabad (hereinafter called "the insurer"). On March 20, 1981, at 11.30 a.m., the first appellant's husband, one Kaja Krishna Murthy aged about 30 years, working as Revenue Inspector in the A. P. State Irrigation Development Corporation at Bhadrachalam and drawing a salary of Rs. 600 per month, met with an accident while travelling in the above jeep driven by the first respondent and owned by the second respondent. In that accident, the husband of the first appellant died. The three appellants had, therefore, filed a claim before the Motor Accidents Claims Tribunal (District Judge), Khammam, claiming Rs.30,000 for the first appellant towards her maintenance, Rs. 30,000 for the maintenance and educational expenses of the second appellant and Rs. 35,000 for the maintenance and marriage expenses of the third appellant. They also claimed special damages of Rs. 5,000. In all, the appellants had claimed a total compensation of Rs. 1,00,000.

2. The first respondent, the driver, remained ex parte. The second respondent only contested the claim of the appellants. The second respondent pleaded that the heirs of the deceased had received substantial amounts from the Government towards F.B.R. and gratuity and they were also entitled to get a sum of Rs. 20,000 under the LIC policy and that, therefore, they were not entitled to claim the above sum. The insurer, the third respondent, denied that the deceased died of the accidental pleaded that the claim of the appellants for compensation of Rs. 1,00,000 was speculative. They also stated that the records at their office had been verified and they did not find that the vehicle, ADY 411, was insured with them. In a fit of irresponsibility, they also denied that the deceased was hale and healthy and was drawing a sum of Rs. 600 per month. Although the insurance company reserved the right to file an additional counter-affidavit, they never filed any additional counter- affidavit. The Tribunal had raised two issues : The first issue is, whether the deceased died due to the rash and negligent driving of the jeep bearing No. ADY 411 by the first respondent and whether the petitioners were entitled to compensation, if any, and if so, against whom? In support of the claim of the claimants, the deceased's wife deposed as P.W.1 marking exhibit A-1 to A-4. Owner of the jeep, ADY 411, never went into the box. On behalf of the insurance company, its administrative officer was examined as R.W. 1 and exhibit B-1 and B-2 were marked. It may be mentioned that exhibit B-1 was the insurance policy dated March 23, 1981. Under that policy, which was valid from March 17, 1981, to March 16, 1982, the third respondent had indemnified (1) the second respondent against loss or damage to the above mentioned jeep, and (2) also against all sums the insured becomes legally liable to pay in respect of the death of or bodily injury to any person including occupants carried in the motor car abovementioned. According to the terms of the policy, the company will indemnify the insured in the event of the accident caused by or arising out of the use of the motor car against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of the death of or bodily injury to any person including the occupants carried in the motor car, provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured (emphasis * supplied).

3. Exhibit B-2 is a note (No. 1 M.T. 5) attaching to and forming part of the above policy. The opening lines of that note reads as follows :

"In consideration of the payment of an additional premium, it is hereby understood and agreed that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employment of the insured coming within the scope of the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is

sustained whilst mounting into, dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in:

Scale of Compensation Rs. (1) Death 15,000 (2) Total and irrecoverable loss of all sight in both eyes 7,500 (3) Total loss by physical severance at or above the wrist or ankle of both hands or both feet or of one hand together with one foot 7,500 (4) Total loss by physical severance at or above the wrist or ankle of one hand or one foot together with the total and irrecoverable loss of all sight in one eye 7,500 (5) Total and irrecoverable loss of all sight in one eye 3,750 (6) Total loss by physical severance at or above the wrist or ankle of one hand or one foot 3,750 (7) Total disablement from engaging in or giving any attention to such person's profession or occupation 75 ..."

4. On the basis of the above evidence, the Tribunal accepted the plea of the claimants that the deceased was an employee of the State Government and was drawing a salary of Rs. 600 per month and was aged about 30 years and met with his death while travelling in the above jeep, ADY 411, as a result of the rash and negligent driving of the first respondent, and fixed the total compensation payable to the claimants at Rs. 50,000 but disclosed no basis for arriving at that figure. However, it limited the liability of the insurer only to the extent of Rs. 15,000 on the basis of exhibit B-2. This is an appeal against the above judgment and order of the Tribunal.

5. The first point for consideration is whether the appellants are entitled to be awarded compensation in a sum of Rs. 1,00,000 on the basis of the death of the deceased and the second point for consideration is whether the third respondent should also be made liable for that amount. The finding of the court below that the deceased was a Revenue Inspector working in the A. P. State Irrigation Development Corporation at Bhadrachalam aged about 30 years and was drawing a salary of Rs. 600 per month at the time when he was killed by the rash and negligent driving of the driver of the second respondent, is fully supported by the evidence. Taking the average longevity of an Indian citizen as 70 years, as held by a Division Bench of this court in *Srisailam Devasthanam v. Bhavani Prameelamma* [1983] ACJ 580; *Srisailam Devasthanam Vs. Bhavani Prameelamma and Others*, , it must be held that the deceased would have lived for another 40 years more. By the time of his superannuation, he would have reached his maximum salary and he would have earned, at least, one promotion and would also have earned, at least, a few pay revisions. Calculating the average monthly pay of the deceased during these 40 years on the above basis at Rs. 1,000 per month, the deceased would have earned Rs. 4,80,000. Taking half of that amount towards his own maintenance, the deceased would have saved, at least, to an extent of Rs. 2,40,000. In addition to the above, the first respondent is entitled to be paid for the loss of consortium during that period which may be put at Rs. 7,500. But, in view of the fact that the claimants have

limited their claim only to Rs. 1,00,000, I, think it is proper to award Rs. 1,00,000 as payable to the claimants. I, accordingly, alter the award of the lower court in regard to the quantum of compensation and fix it at Rs. 1,00,000.

6. The next question that arises for consideration is whether the third respondent-insurance company also should be held liable to pay this amount or should the extent of the liability of the third respondent be limited to Rs. 15,000 as the lower court has done basing upon exhibit B-2. Primarily, the third respondent's liability must be based upon its contractual undertaking, under the abovementioned insurance policy. In answering the above question, the first thing which may be noted is that the second respondent has never taken this plea in his counter. The third respondent never argued that its liability be limited to Rs. 15,000. In the absence of such a pleading, I am of the opinion that the lower court erred in receiving any evidence on that point and acting upon it. It is necessary to state that no evidence can be let in or looked into, except in support of the pleading which has been taken by the parties. Inasmuch as no such pleading has been taken, I must hold that the lower court erred in admitting exhibit B-2 evidence and acting upon it. u/s 96(2) of the Motor Vehicles Act, this cannot be one of the defences open to the insurer. Probably, that is the reason why the insurance company had never taken such a plea in the court below. In any case, the insurer, under the express terms of the policy, had undertaken to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of the death of, or bodily injury to, any person including the occupants carried in the motor car. It is clear from the evidence that the deceased had died while travelling in the second respondent's motor car and had, thereby, made the second respondent legally liable to pay to the estate of the deceased the compensation for the death caused to the deceased. The insurance company having undertaken that liability cannot now plead that it is not liable to pay that amount. The scheme of the insurance policy is to ensure the entire liability that the insured may incur by reason of the death of the deceased. The only exceptions which are provided for in the application of the above liability to the insurer is mentioned in the last para of that policy which says, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured, except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939. The language of this part of the policy makes it clear that except in the case of employees of the insured who met with their death or suffered bodily injury by reason of the use of the motor car, the insurance company shall be completely and totally liable. That part of the insurance policy enjoins upon the total liability to third parties. But, apparently, the clauses of the insurance policy do not indicate who these third parties are. Clauses by their language make it clear that every person who is not a party to the contract of insurance between the insurer and the insured is a third party. The argument of Sri Hanumaiah learned counsel for the insurance company, that the deceased in this case is not a third party and that, therefore, the insurance company is not liable to pay the

damage, cannot, therefore, be accepted, nor can the claim of the insurance company to a limited liability be accepted, on the basis of the abovementioned exhibit B-2. A careful reading of the language of exhibit B-2 would show that it would apply only to the bodily injury sustained by any passenger and has no application to the death, although death was mentioned in exhibit B-2. It appears to me that the applicability of exhibit B-2 is to be excluded on the basis that exhibit B-2 provides for the additional liability of the insurance company on the basis of the additional premium paid by the insured. In other words, exhibit B-2 does not contain the limiting clause relating to the quantum of compensation. The language, "in consideration of the payment of an additional premium...that the company undertakes to pay compensation," clearly shows that the company is undertaking the additional liability besides the liability which the company had already undertaken under the terms of the body of the agreement. The present argument of the company that exhibit B-2 limits the liability appears to me to be untenable, because it involves a limitation of the general liability assumed under the body of the policy, without there being sufficient words used for that purpose. Further, this exhibit B-2 seems to be contrary to the statutory provision contained u/s 95(2)(b)(4)(c) of the Motor Vehicles Act, 1939, which expressly provides that where the vehicle is vehicle of any other class, the amount of the liability incurred by the insured shall be the liability of the insurer. Exhibit B-2 also appears to me to be void for its uncertainty. It speaks of compensation on the scale provided, whereas, actually, we find that no scale is provided but only a fixed amount is provided.

7. In view of the above, I do not think that it is necessary to go through the various decisions cited by the parties. I, accordingly, hold that under the terms of the insurance policy, the liability of the insurance company is coterminous with that of the liability of the insured which the insured had incurred by reason of the death he had caused. For reaching the above conclusion, it is not necessary for me to read the relevant statutory provisions. I wholly rely upon the terms of the insurance policy and hold the insurance company totally liable to the extent that the insured was found liable. As I have found the insured liable to pay a sum of Rs.1,00,000 to the appellants/ petitioners, I hold that the third respondent-insurance company should be jointly and severally liable along with the insured to pay that amount to the appellants. The amounts payable to the appellants will be divided into three portions. The mother will be paid Rs.50,000, the second appellant-son will be entitled to be paid Rs. 25,000 and the third appellant will be entitled to be paid Rs. 25,000. The amounts payable to the second appellant-minor son and the third appellant-minor daughter, will be paid into a nationalised bank to be operated by the mother for the use and benefit of the children till the children attain majority. It shall be open to the parties to obtain any further directions, if needed, about the management of these deposits kept with the bank. The appeal is allowed with costs.