
(1987) 03 AP CK 0047
In the Andhra Pradesh High Court

Kaja Trisula Devi and Others

APPELLANT

Vs

Naragani Nageswar Rao and Others

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D, 96(2)

Citation : (1987) 2 ACC 571 : (1988) ACJ 974

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

Bench : Single Bench

Judgement

P.A. Choudhary, J.—This C.M.A. is filed u/s 110-D of the Motor Vehicles Act against the Order and Judgment of the Motor Accidents Claims Tribunal (District Judge), Khammam. The 1st appellant is the wife of the deceased. The 2nd and the 3rd appellants are the children of the deceased, being minors, represented by the 1st appellant. The 1st respondent in this appeal is the Driver. The 2nd respondent is the owner of the Jeep bearing No. ADY 411 (hereinafter called as the insured). The 3rd respondent is The Oriental Fire & General Insurance Company Limited, Hyderabad (hereinafter called as the insurer). On 20-3-1981 at 11-30 A.M., the 1st 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 1st respondent and owned by the 2nd respondent. In that accident, the husband of the 1st appellant died. The three appellants had, therefore, filed a claim before the Motor Accidents Claims Tribunal (District Judge), Khammam claiming Ri, 30,000/- for the 1st appellant towards her maintenance; Rs. 30,000/- for the maintenance and education expenses of the 2nd 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 the total compensation of Rs. 1,00,000/-.

2. The 1st respondent, the driver, remained exparte. The 2nd respondent only

contested the claim of the appellants. The 2nd 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 3rd respondent, denied that the deceased died of the accident and pleaded that the claim of the appellants for compensation of Rs. 1,00,000/-, was speculative. They also stated that the records of their office had been verified and they did not find the vehicle, ADY 411 was insured with that company. 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 1st issue is, whether the deceased died due to the rash and negligent driving of the jeep bearing No. ADY 411 by the 1st 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 Exs. 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 Exs. B-1 and B-2 were marked. It may be mentioned that Ex. B-1 was the insurance policy dt. 23-3-1981. Under that policy which was valid from 17-3-1981 to 16-3-1982, the 3rd respondent had indemnified, (1) the 2nd respondent against the 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 or bodily injury to any person including occupants carried in the Motor Car above mentioned. 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 cost and expenses which the insured shall become legally liable to pay in respect of the death 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). Ex. B-2 is a Note No. I.M.T. 5 attaching to and forming part of the above Policy. The opening lines of that Note 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

(1)

Death

Rs. 15,000

(2)

Total and irrecoverable loss of all sight in both eyes.

Rs. 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.

Rs. 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.

Rs. 7,500/-

(5)

Total and irrecoverable loss of all sight in one eye.

Rs. 3,750/-

(6)

Total loss by physical severance at or above the writ or ankle of one hand or one foot.

Rs. 3,750/-

(7)

Total disablement from engaging in or giving any attention to such persons profession or occupation.

Rs. 75/-

3. 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 his death while travelling in the above Jeep, ADY 411 as a result of the rash and negligent driving of the 1st respondent, and fixed the total compensation payable

to the claimants at Rs. 50,000/- but disclosed no basis for arriving at that figure. However, he limited the liability of the insurer only to the extent of Rs. 15,000/- on the basis of Ex. B-2. This is an appeal against the above judgment and order of the Tribunal.

4. 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 3rd 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 2nd 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 Pramillamma and Ors.* 1983 ACJ P. 580, it must be held that the deceased would be living 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 1st 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/-.

5. The next question that arises for consideration is whether the 3rd respondent-insurance company also be held liable to pay this amount or should the extent of the liability of the 3rd respondent be limited to Rs. 15,000/- as the Lower Court has done basing upon Ex. B-2. Primarily, the 3rd respondent's liability must be based upon its contractual undertaking, under the above-mentioned insurance policy. In answering the above question, the first thing which may be noted is that the 2nd respondent has never taken this plea in his counter. The 3rd 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 taken 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 Ex. B-2 evidence and acting upon it. u/s 96(2) of the Motor Vehicles Act, this cannot be one of the defences open for 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 Card. That liability is subject to the limits of the contract and Section 95(2) of the Act. Section 95(2) imposes no limits on the maximum liability left free to be decided by the contract. Section 95(2) imposes only minimum statutory liability. It is clear from the evidence that the deceased had died while travelling in the 2nd respondent's motor car and had, thereby, made the 2nd 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 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 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 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 the 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 above-mentioned, Ex. B-2. A careful reading of the language of Ex. 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, the death was mentioned in Ex. B-2. It appears to me that the applicability of Ex. B-2 is to be excluded on the basis that Ex. 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, Ex 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 Ex. B-2 limits the liability, appears to me to be untenable, because it involves as a limitation of the general liability assumed under the body of the policy, without there being sufficient words used for that purpose, further, this Ex, B-2 seems to be contrary to the statutory provision contained u/s 95 (2) (4) (c) of the Motor Vehicles Act, 1939 which expressly provides that where the

vehicle is a vehicle of any other class, the amount of the liability incurred by the insured, shall be the liability of the insurer. Ex. B-2 also appears to me to be void for its uncertainty. It speaks of compensation on the scale provided: Whereas, actually, we find no scale is provided: Only, a fixed amount is provided.

6. 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 co-terminus 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 3rd 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 2nd appellant-son will be entitled to be paid Rs. 25,000/- and the 3rd appellant will be entitled to be paid Rs. 25,000/-. The amounts payable to the 2nd appellant-minor son and the 3rd appellant-minor daughter, will be paid into a nationalised bank to be operated by the mother for the permanent benefit of the children till the children attain the majority. It shall be open for 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.

CMA No, 935/1983:

In view of my order in CMA No. 1012/1983, no further orders need be passed in this CMA. Accordingly, the CMA is dismissed. No costs.