
(2014) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 2001 and 2186 of 2005

Kampalli Laxmirajamma and Others

APPELLANT

Vs

Mankali Sampath and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 170

Citation : (2015) 2 AnWR 446

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Ramachandar Rao Vemuganti, Advocates for the Appellant

Judgement

B. Chandra Kumar, J.—Since both the appeals arise out of same accident and the respondents in both the appeals are common, they are heard together and are being disposed of by this common order. For the sake of convenience and to avoid ambiguity in the discussion, the parties will hereinafter be referred to as they are arrayed in the O.Ps.

2. The facts of the case, in brief, are as follows:

The deceased, the injured and some others were proceeding in a jeep bearing registration No. AP 15V 6318. When the jeep reached the outskirts of Nittoor village, it is alleged that the driver of the jeep, the 1st respondent, drove the same in a rash and negligent manner with high speed and dashed to a motorcycle. As a result of which, the jeep turned turtle resulting in injuries to the deceased, the injured and others who were traveling in the jeep. The deceased died on the way to hospital. It is stated that the deceased was aged about 45 years at the time of accident and earning Rs. 5,000/- per month by doing cultivation. The claimants of the deceased filed O.P. No. 651 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar (for short "the Tribunal") claiming compensation of Rs. 2,00,000/-. It is also stated that the injured sustained grievous injuries on her left leg, right

eye and to her both shoulders. She was shifted to Government Hospital at Peddapalli from where she was shifted to Dr. Mothilal, Orthopaedician, Karimnagar and took treatment as an inpatient for a period of 40 days. It is also stated that the injured lost eyesight in her right eye and became permanently disabled. It is also her case that she is unable to work as a labourer. She filed O.P. No. 768 of 2003 before the Tribunal claiming compensation of Rs. 1,50,000/-.

3. Respondents 1 and 2 in O.P. No. 768 of 2003 remained ex parte. They filed a written statement in O.P. No. 651 of 2003 denying the averments made in the petitions, while admitting that the 1st respondent is the driver and the 2nd respondent is the owner of the jeep. It is contended that the 1st respondent was driving the jeep slowly and cautiously, but one Aggi Chandraiah drove the motorcycle with high speed in a rash and negligent manner and dashed to the jeep. To avoid the accident, the 1st respondent took extreme left side of the road and therefore the jeep turned turtle due to rash and negligent driving of the motor cycle. It is also contended that if any compensation to be paid, it has to be paid by the Insurance Company as the 1st respondent got valid and effective driving licence on the date of the accident.

4. The Insurance Company filed written statements in both the O.Ps. denying the averments made in the petitions and contending that the driver, insurer and owner of the motorcycle are proper and necessary parties and that the driver and owner of the jeep violated the terms of the M.V. Act and terms of the policy as more passengers were traveling in the jeep. Therefore, the Insurance Company is entitled to protection under Sections 147, 149 and 170 of the M.V. Act.

5. On the basis of the above pleadings, the Tribunal framed the following issues, which are common in both the O.Ps., for consideration:

1) Whether the accident took place due to rash and negligent driving of jeep No. AP 15V 6318 by its driver?

2) Whether the petitioners are entitled to compensation and if so to what amount and from whom?

3) To what relief?

6. In O.P. No. 651 of 2003, on behalf of the claimants, P.Ws. 1 and 2 were examined and Exs. A. 1 to A. 7 were marked. On behalf of the respondents, R.Ws. 1 and 2 were examined and Exs. B. 1 and B. 2 were marked.

7. In O.P. No. 768 of 2003, on her behalf, the injured examined herself as P.W. 1. She also examined the doctor, who treated her, as P.W. 2 and got marked Exs. A. 1 to A. 10 and Exs. C. 1 and C. 2. On behalf of the respondents, no oral evidence was adduced, but Ex. B. 1, a copy of policy, was marked.

8. By separate orders dated 31.12.2004 the Tribunal partly allowed the O.Ps.

awarding compensation of Rs. 1,20,000/- in O.P. No. 651 of 2003 and Rs. 50,000/- in O.P. No. 768 of 2003 with interest @ 9% p.a. from the date of petition till the date of payment. It was ordered that the respondents 1 and 2 shall pay 50% of the compensation amount and the Insurance Company shall pay the remaining 50% of the compensation amount within one month. Aggrieved by the same, the claimants preferred M.A.C.M.A. No. 2186 of 2005, while the injured preferred M.A.C.M.A. No. 2001 of 2005.

9. In both the O.Ps. the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving by the driver of the jeep. The said finding is not in dispute.

10. In O.P. No. 768 of 2003 the Tribunal though considered that the claimant sustained 40% disability, but awarded a sum of Rs. 20,000/- towards compensation for partial permanent disability. The Tribunal also awarded Rs. 10,000/- towards medical expenses, Rs. 2,000/- towards transport charges. Thus, in all the Tribunal awarded Rs. 49,700/- which was rounded off to Rs. 50,000/- as compensation.

11. In O.P. No. 651 of 2003 the Tribunal has taken the income of the deceased at Rs. 1,200/- per month and by applying multiplier "11" awarded Rs. 1,05,600/- towards loss of dependency. Further, the Tribunal awarded an amount of Rs. 10,000/- towards loss of consortium, Rs. 2,000/- towards funeral expenses, and Rs. 2,000/- towards transport charges. Thus, in all an amount of Rs. 1,19,600/- which was rounded off to Rs. 1,20,000/- towards compensation.

12. In both the O.Ps., the Tribunal came to the conclusion that the evidence on record shows that the policy covers the risk of five passengers, but in this case the jeep was carrying ten passengers and that the owner has violated the terms of the policy and, therefore, the driver & owner and the insurer of the Jeep are liable to pay the compensation equally.

13. As seen from the evidence of R.W. 1, who is R.W. 2 in O.P. No. 768 of 2003, in O.P. No. 768 of 2003, the witness examined on behalf of the Insurance Company, admitted that the total claimants are not more than five. When the total claimants are not more than five, it becomes irrelevant as to how many persons sustained injuries in the accident. More over, carrying excess passengers cannot be said to be a major violation. In *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.*, Divisional Office, Hasan AIR 1996 SCC 2054, the Apex Court was dealing with an issue of carrying persons more than the number permitted in terms of insurance policy. The Apex Court also observed as under:

"Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be a fundamental breach that the owner should; in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant

case, however, there was no such contributory factor."

14. Similar question was considered by the Apex Court in National Insurance Company Ltd. Vs. Reena Devi and Others, . In the said judgment, the Apex Court referred to a judgment in State of Maharashtra Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh ((2002) 125 PLR 558) and observed that only because of overloading, it cannot be said that there is any breach of conditions of the permit.

15. In view of the above discussion, I hold that mere carrying passengers more than the number permitted in terms of insurance policy would not amount to fundamental breach of terms and conditions of the policy and the Insurance Company is liable to pay compensation. Even otherwise, if it is found that the owner has violated the terms of the policy, the Insurance Company should pay the compensation to the claimants and then may recover the same from the owner of the vehicle. Even where any violation has been alleged, such as, taking persons more than the number permitted, then it has to be examined whether the owner of the vehicle permitted the driver to carry those persons and whether it was done with the knowledge and consent of the owner. Where there is no evidence to show that the owner has permitted the driver to carry more number of passengers than permitted or where there is nothing on record to say that it was within the knowledge of the owner, then the liability cannot be fastened on the owner of the vehicle. This has to be examined when there is an allegation of carrying unauthorized passengers in a vehicle. Unless a person has mens rea or knowledge of the consequences, no misconduct can be attributed against such person. Making an allegation that the owner has permitted the more number of passengers to be carried in a vehicle or authorized the driver to carry unauthorized passengers, amounts to an allegation against the owner of the vehicle and the same has to be proved by independent evidence. Therefore, I hold that the Insurance Company is liable to pay the compensation.

16. Coming to the quantum of compensation in O.P. No. 651 of 2003, the deceased was aged about 45 years and appropriate multiplier is "13". The claimants' case is that the deceased was working as an agriculturist. Having regard to the facts and circumstances of the case, I consider it just and reasonable to take the income of the deceased at Rs. 3,000/- per month. If 1/3rd is deducted towards personal and living expenses of the deceased, the loss of dependency to the family would come to Rs. 2,000/- per month and the annual income would be Rs. 24,000/- and the total loss of earnings would come to Rs. 3,12,000/- (Rs. 24,000/- x 13). Apart from that, a sum of Rs. 1,00,000/- is awarded towards loss of consortium to the 1st claimant, Rs. 1,00,000/- towards loss of care and guidance to the 2nd claimant being minor on the date of accident, Rs. 1,00,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses. Thus, in all the claimants are entitled to a sum of Rs. 6,37,000/- (Rupees Six lakh thirty seven thousand only) towards compensation.

17. In Rajesh and Others Vs. Rajbir Singh and Others, , it is held that the Tribunal/Court has a duty, irrespective of the claims made in the application, if

any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

18. In the result, M.A.C.M.A. No. 2186 of 2005 is allowed enhancing the compensation to Rs. 6,37,000/- (Rupees Six lakh thirty seven thousand only). The enhanced compensation amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The deficit court fee can be paid at the time of drafting of a decree or the same can be deducted from the compensation amount awarded. There shall be no order as to costs.

19. Coming to the quantum of compensation in O.P. No. 768 of 2003, the evidence on record shows that the injured sustained 40% disability. The Tribunal should consider the evidence of the doctor and decide the loss of earnings. In this case, the injured sustained injuries to her left leg and right eye. Ex. A. 2 is the wound certificate. She has also examined the Doctor J. Mothilal as P.W. 2. P.W. 2 clearly deposed that the injured sustained fracture and there is a restriction of movement of elbow, and that the injured was advised bed rest for two months and physiotherapy for three weeks. In the circumstances, it appears the injured cannot work as previously. So, the loss of earnings have to be calculated basing on the disability. In the circumstances, I consider it just and reasonable to take the earnings of the injured at Rs. 3,000/- per month. Thus, if the disability of the injured is taken at 40%, the loss of earnings per month would come to Rs. 1,200/- and the annual loss of earnings would be Rs. 14,400/-. The age of the injured was 40 years at the time of the accident, which fact is not in dispute. Appropriate multiplier is "15" and applying the same, the total future loss of earnings would come to Rs. 2,16,000/- (Rs. 14,400/- x 15). Further, the injured is entitled to Rs. 15,000/- towards extra nourishment and medicines, Rs. 5,000/- towards transport charges, Rs. 20,000/- towards pain and suffering, and Rs. 9,000/- towards loss of earnings. Thus, in all the injured is entitled to Rs. 2,65,000/- (Rupees Two lakh sixty five thousand only).

20. In the result, M.A.C.M.A. No. 2001 of 2005 is allowed enhancing the compensation to Rs. 2,65,000/- (Rupees Two lakh sixty five thousand only). The enhanced compensation amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The deficit court fee can be paid at the time of drafting of a decree or the same can be deducted from the compensation amount awarded. There shall be no order as to costs.

21. Consequently, miscellaneous petitions, if any, pending in the appeals shall stand closed.