

(2000) 06 AP CK 0061

In the Andhra Pradesh High Court

Case No : AAO No"s. 448 and 978 of 1991

Kanuganti Kavitha and others

APPELLANT

Vs

Osman Bin Ahmed and others

RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 110
Motor Vehicles Act, 1988 — Section 166, 186

Citation : (2000) 5 ALD 244

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Mr. Tulasi Reddy, V, for the Appellant; Mr. S.V.R.S. Somayajulu, for the Respondent

Judgement

1. These two appeals are directed against the award dated 18-12-1990 in OPNo.118 of 1990 on the file of Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad.

2. CMA No.448 of 1991 is preferred by the claimants-appellants namely, wife, children, and parents of the deceased Chandram seeking enhancement of the compensation on the ground that the Tribunal has not applied the correct multiplier and erroneously awarded a meagre sum of Rs.1,30,000/- as against a total claim of Rs.3,00,000/- for the death of the deceased at the age of 28 years on 26-3-1990.

3. CMA No. 978 of 1991 is preferred by the insurance Company and the owner of the lorry contending that the vehicle in question was not all involved in the accident and the Tribunal ought not to have passed the award fastening the liability on the insurer-appellant Insurance company to pay the compensation.

4. The facts of the case leading to filing of these appeals are as follows:

On 26-3-1990 at about 7.30 p.m. the deceased Chcmdram was returning on a scooter bearing No.AIH 2613 from Mshmaddapur to Kamareddy along with one

Ramachander who was sitting as a pillion rider, and when they reached near Jangampally outskirts, a lorry bearing No-APJ 5637 which was coming in the opposite direction from Kamareddy side at a high speed in a rash and negligent manner, dashed against the scooter, as a result, the deceased fell down and died on the spot. The pillion rider Ramachander received injuries and became unconscious.

5. It is stated by the appellants-claimants that the deceased was doing business in garments and was also a partner in a Finance company at Kamareddy and earning Rs.3,000/- per month. They claimed a total compensation of Rs.3,00,000/- for the untimely death of the deceased at the young age of 28 years.

6. The first respondent therein who is the driver of the lorry bearing No.APJ 5637 filed a memo adopting the counter-affidavit of the 2nd respondent, who is the owner of the vehicle. The 2nd respondent therein, i.e., owner of the lorry bearing No.APJ 5637 admitted the involvement of the vehicle in question and stated that the vehicle in question was insured with the 3rd respondent-Insurance Company and it was in force at the time of the accident.

7. The 3rd respondent-Insurance Company, (appellant in CMA No.978 of 1991), filed counter denying the involvement of the lorry and also the accident. It disputed the income and age of the deceased and relationship of the claimants with him. The compensation claimed is excessive. The driver of the lorry was not having valid driving licence at the time of the accident.

8. On the above pleadings the Tribunal framed necessary issues for consideration.

9. The appellants-claimants examined PWs.1 to 4 and marked Exs.A1 to A9. The respondents examined RWs.1 and 2 and marked Exs.B1 to B9.

10. The Tribunal on appreciation of the evidence both oral and documentary, particularly the evidence of eye-witnesses to the accident viz., PW2 who was travelling in the lorry in question and PW4 who was the pillion rider on the scooter, and Exs.A1, and A4 held that the accident occurred due to the rash and negligent driving of the lorry bearing No.APJ-5637 by the first respondent and the deceased Chandram died on the spot and the pillion rider Ramachander sustained injuries. The Tribunal also relying on the oral evidence and the documentary evidence including Ex.A1 and Ex.B3 held that the second respondent was the owner of the lorry bearing No.APJ-5637 involved in the accident. It is noteworthy to note that the driver and the owner of the lorry have not adduced any evidence and on the other hand when the investigator of the insurance company contacted them, they admitted about the accident and the involvement of the lorry. I, therefore, do not find any infirmity in the said findings of fact reached by the Tribunal.

11. As regards the determination of just compensation contemplated under 166 of the Motor Vehicles Act, Mr. V. Tulasi Reddy, learned Counsel for the appellants-

claimants contended that the Tribunal committed error in not applying the correct multiplier and that in the facts and circumstances of the case the compensation awarded by the Tribunal is on lower side.

12. Sri M. Srinivas Rao, learned Counsel for the appellant-insurance company, however, contended that since the appeal against the owner of the lorry in question having been dismissed in default for not paying "batta" and for not effecting the service by the Court 19-4-1999, the appellant-Insurance Company cannot be fastened with the liability in the absence of the insured i.e., the owner. He has drawn my attention to the decision of the Apex Court in *Oriental Insurance Co. Ltd. v. Sunita Rathi* AIR 1998 SC 257. The relevant portion of the judgment runs as follows:

"The motor accident occurred on 10th December, 1991 at 2.20 p.m. It was only thereafter the same day at 2.55 p.m., that the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There is express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10th December, 1991 at 2.55 p.m. The applicability of the decision in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, has to be considered on these facts. In our opinion the decision in *Ram Dayal's* case is distinguishable and has no application to the facts of this case. The facts of that decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in *Ram Dayal's* case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous mid-night and, therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 p.m. and the cover note was obtained only thereafter at 2.55 p.m. in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10-12-1991 at 2.55 p.m. The reliance on *Ram Dayal's* case (supra) by the Tribunal and the High Court was, therefore, misplaced, we find that in a similar situation, the same view which we have taken, was also the view in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , wherein *Ram Dayal's* case (supra) was distinguished on the same basis.

It follows that the insurer cannot be held liable on the basis of the above policy in the present case, and therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under

the contract of insurance. There is, thus a basic fallacy in the conclusion reached by the Court on this point."

13. Countering the above contention, Sri Tulasi Reddy, learned Counsel for the appellants-claimants has drawn my attention to a latest decision of the Apex Court in *A. Robert v. United Insurance Co. Ltd.* (1998) 8 SCC 226, wherein in an identical situation, the Supreme Court considering the effect of dismissal of the SLP against insured owner for not effecting service held that the liability of the insurer subsists continuously and it cannot disown the liability and as the insured is not a party before the Court, the Insurance Company's statutory liability u/s 110-A of the Motor Vehicle Act, 1939, (for short "old Act") would be Rs. 1,50,000/- at the highest and thus allowed the appeal by raising the compensation from Rs.99,000/- to Rs.1,50,000/-. Under the Motor Vehicle Act, 1988 (for short "new Act") the maximum limit has been removed and it has become unlimited. As rightly contended by the learned Counsel for the claimants-appellant the decision of the Apex Court in *Oriental Insurance Co., Ltd* 's case (supra) has no application to the present case as in that decision policy was obtained subsequent to the accident indicating ,the time and in that view of the matter, the Apex Court held that the liability is coextensive with that of the insured owner and there was no contract existing as on the time of the accident. Here it is not the case of the Insurance Company.

14. The learned Counsel for the respondent-Insurance company lastly contended that the vehicle in question was not involved in the accident. I do not find any force in his contention since the owner has admitted the involvement of the vehicle in question and so also the lorry driver. That apart in the absence of any evidence adduced rebutting the same, so as to discharge the burden cast upon the owner and driver of the vehicle in question, the insurance company is not correct in raising such contention.

15. As far as the enhancement of the compensation is concerned, the learned Counsel for the appellants-claimants has drawn my attention to the decisions of the Apex Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , *U.P. State Road Transport Corporation v. Trilok Chandra* (1996) SCC 362 and contended that the Tribunal has not applied the correct multiplier and as the deceased was aged 28 years at the time of accident, the appropriate multiplier in the facts and circumstances of the case is 16. I find some force in his contention.

16. As regards the loss of dependency is concerned, the learned Counsel for the claimants-appellants has drawn my attention to the evidence of PW1, widow of the deceased who deposed that the deceased was a partner in a finance company and he used to earn Rs.3,000/- and that he also invested a sum of Rs.91,000/- as per Ex.A3 the partnership deed. Ex.A2 the certificate issued by the Assistant Commercial Tax Officer, Kamareddy, was also produced indicating that the deceased was one of the partner of M/s. Balaji Garments, Kamareddy. Though PW2 was examined, he did not speak about the income aspect. However,

considering the version of PW1 and the financial status of the deceased, the earnings of the deceased fixed by the Tribunal in my view is not correct and the Tribunal ought to have taken the evidence of PW1 in proper perspective way. Though she deposed that the deceased was earning Rs.3,000/- per month, nonetheless, the Tribunal took Rs.1,000/- as the loss of dependency per month. The said finding appears to be unreasonable. On perusal of the evidence available on record, and in view of Exs.A2, A3, I am of the view that the monthly earnings of the deceased can be fixed at Rs.1,500/- per month which is just and reasonable and by deducting 1/3rd towards personal expenses of the deceased, Rs.1,000/- can be earmarked as loss of dependency, which annually comes to Rs.12,000/. The proper multiplier in the facts and circumstances of the case as per the decisions of the Apex Court referred to above would be 16 and thus loss of dependency comes to (Rs.12,000 x 16 = Rs.1,92,000/). Following the decisions of the Supreme Court in Trilok Chandra "s case (supra) a sum of Rs.15,000/- is hereby awarded towards loss of estate and a further sum of Rs.15,000/- towards loss of consortium. Thus the compensation awarded by the Tribunal is enhanced from Rs.1,30,000/- to Rs.2,22,000/- with 12% interest from the date of petition till realisation. Apportionments made by the Tribunal shall be maintained. However, the major appellants shall be at liberty to move the Tribunal seeking withdrawal of their part of the amount and if such an application is filed the Tribunal shall dispose of the application in accordance with law.

17. Subject to the above modifications, the CMA No. 448 of 1991 preferred by the claimants-appellants is allowed in part and the CMA No.978 of 1991 preferred by the insurance company is meritless and it is accordingly dismissed. No costs.