
(2013) 12 AP CK 0013
In the Andhra Pradesh High Court
Case No : MACMA No. 662 of 2009

Karimella Santhammaand Another

APPELLANT

Vs

More Venkanna and Others

RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2014) 4 ALT 10

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.—Challenge in this appeal is the award dated 02-06-2008 in O.P. No. 327 of 2005 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari at Eluru (for short "the Tribunal") whereunder the Tribunal in respect of death of one Karimella Narasimhacharyulu @ Narasimhamurthy (hereinafter "the deceased") in a motor vehicle accident has granted compensation of Rs. 2,97,000/- against respondents 1 and 2 and dismissed the claim against the third respondent i.e. New India Assurance Company Limited. Hence, the instant MACMA by the claimants, who are L.Rs. of the deceased, to grant decree against the third respondent/Insurance company also.

2. Factual matrix of the case is thus:

a) Claimants 1 and 2 are wife and son of the deceased. Respondents 1 to 3 before the tribunal are: driver, owner and insurer of the auto bearing No. AP 37W 2729.

b) The case of the claimant is that on 30-09-2004 when deceased, his wife and his brother's son viz., K.Appalachari were travelling in auto bearing No. AP 37W 2729 from Agadalalanka village of Bhimadolu Mandal in West Godavari district to go to Bhimadolu and on the way when the auto reached Gundugolanu bridge at 4.30 P.M. the first respondent drove the auto at a high speed and in a rash and negligent manner and dashed its front motor cycle bearing No. AP 37 AC 950 and due to impact of the hit their auto turned turtle and claimants and deceased fell

down and suffered injuries. They were shifted to Government Head Quarters Hospital, Eluru by the High way patrolling party. However, the deceased succumbed to injuries on the way to hospital. It was attributed that accident was occurred due to the fault of first respondent. It was further averred that deceased was aged 50 years and doing carpentry work and earning Rs. 4,000/- per month and in his death they lost their fender. On these pleas claimants filed O.P.No.327 of 2005 against respondents 1 to 3 and claimed Rs. 3 lakhs as compensation.

c) Respondents 1 and 2 mainly contended that the accident was occurred not as pleaded by the claimants. Their contention is that the back tyre of the auto was punctured and hence the first respondent kept his auto on the left side of the road near Gundugolanu bridge and went in search of vulcanizing shop and in the meanwhile, the deceased and others who were going on the road seeing some buffaloes came in opposite direction started running and came by the side of auto and in the meantime, the said buffaloes came and dashed the auto and as a result auto fell on the southern side and the deceased who happened to be by the side of the auto received grievous injuries and subsequently died. Thus, R1 and R2 denied the manner of occurrence of accident as pleaded by the claimants. They also denied the age, avocation and income of the deceased and contended that the deceased was 70 years old and sickly person and since 10 years prior to the accident he was not doing any work and depending on his son.

d) Whereas the third respondent contended that the accident was occurred due to collusion between the two vehicles. Hence, the owner and insurer of the motor cycle are also responsible and OP was bad on account of non-joinder of parties. R3 also denied the case of the claimants and urged to put them strict proof of petition averments. R3 further pleaded that claimants shall prove that the first respondent was having valid driving licence to drive the auto. Thus all the respondents prayed for dismissal of OP.

d) During trial P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. First respondent was examined as R.W. 1. On behalf of R3/ Insurance Company, R.Ws. 2 and 3 were examined and Exs.B1 and B2 were marked.

f) A perusal of the award shows that the Tribunal having relied upon the eye-witness account of P.Ws.1 and 2 who were the victims of the accident coupled with documentary evidence Ex.A1-FIR, Ex.A2-MV Inspector's report and Ex.A4-charge sheet held that the accident was occurred due to the rash and negligent driving of the auto driver i.e. first respondent. In that process the Tribunal disbelieved the theory put forth by respondents 1 and 2.

g) Regarding quantum of compensation, the Tribunal awarded Rs. 2,97,000/- under different heads. Regarding liability of respondents, the Tribunal held that respondents 1 and 2 being the driver and owner are liable to pay the compensation. R3-Insurance Company is concerned, the Tribunal basing on

Exs.B2-policy copy though observed that the policy was in force but basing on Ex.A6-driving licence of R1 held that he was having only learning licence as on the date of accident and his wife i.e. R2 knowingly allowed him to drive the vehicle by not following the conditions mentioned in Rule 3 of the Central Motor Vehicles Rules, 1989 and thus violated terms of licence. The Tribunal further observed that R1 and R2 also violated one of the conditions of policy i.e. the person holding learning licence shall not drive the vehicle for transport of passengers. Thus the Tribunal ultimately held that R1 and R2 committed breach of terms of policy and licence which is a fundamental breach and accordingly exonerated R3 from the liability. Hence, the appeal by the claimants to grant decree against R3 also.

3. Heard the arguments of Sri I.Gopal Reddy for claimants and Kambampati Ramesh Babu for R1 and Sri B.Devanand for R3-Insurance company.

4. The parties are referred to as they stood before the Tribunal.

5. The contention of learned counsel for appellants/claimants is that the Tribunal erred in exonerating Insurance Company in spite of the fact that Ex.B2--Insurance Policy was in force by the date of accident. He argued that as per the decision reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, the person holding learner's licence can also be said to be duly licenced to drive the vehicle and there will be no breach of the policy on that count. Therefore, the Tribunal ought to have held that Insurance Company was liable to pay compensation. Learned counsel further argued that since the policy was in force, the Tribunal atleast ought to have directed the Insurance Company pay the compensation and recover from respondents 1 and 2. He thus prayed to allow the appeal and fasten the liability on Insurance Company also. He relied upon the decision reported in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, on the point that though the driver in that case did not have valid and effective licence still the Insurance Company was directed to pay compensation to the claimants with a right to recover from the owner and driver.

6. Per contra, learned counsel for R3/Insurance Company while supporting the award firstly argued that first respondent possessed only learner's licence but not full-fledged licence and a person having learning licence cannot be said to be duly licenced as by this Court in New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, .

Secondly learned counsel argued that as per terms of Ex.B2-policy, though a person holding an effective and valid learner's licence can drive the auto in question but he cannot drive the vehicle for transport of passengers. In the instant case, R1 and R2 have violated the above condition of the policy inasmuch as R1 drove the auto with passengers at the time of accident. Apart from the above breach of policy, R1 and R2 committed another breach of policy also. As per the terms of policy, a person holding learner's licence while driving the vehicle shall satisfy the requirements of Rule 3 of Central Motor Vehicles Rules,

1989. As per the said rule, learned counsel argued, R1 shall be accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor shall sit along with R1 to control or stop the vehicle. Further, R1 should affix "L" board on the front and rear side of the vehicle. However, R1 failed to observe these rules. Thus, R1 and R2 committed total breach of terms of policy. Learned counsel submitted that the Tribunal treated the absence of full-fledged driver by the side of R1 at the time of accident as "fundamental breach" by observing that had such driver been there he would have certainly prevented R1 from causing accident. Hence, the Tribunal rightly exonerated R3 from the liability though policy was in force. He further submitted that when the Insurance Company could able to establish flagrant violations of terms of policy, the question of directing it to pay and recover the compensation from the owner of the vehicle does not arise. On this aspect he relied upon the following decisions.

1. The New India Assurance Company Limited Vs. G. Sampoorna and Others,
2. Sardari and Others Vs. Sushil Kumar and Others,
3. New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another,
4. Bajaj Allianz General Insurance Company Limited Vs. Yenni Surya Rao and Another,

He thus prayed for dismissal of appeal.

7. In the light of above divergent arguments, the points for determination in this appeal are:

(i) Whether the Tribunal's finding in exonerating R3/Insurance Company from the liability is factually and legally correct?

(ii) If point No.1 is held in affirmative, whether still R3/Insurance Company can be directed to pay the compensation to the claimants and recover from R1 and R2?

8. Point No.1: The accident involvement of auto bearing No.AP 37W 2729 and death of deceased are not disputed in this appeal and so there needs no discussion on these aspects at present. Hence, the first aspect for discussion under this point is whether R1 who held Ex.A6-learner's can be said to be duly licensed or not in view of contention of R3 that a person holding learner's licence cannot be said to be duly licensed. He put-forth the said contention in the light of decision reported in New India Assurance Co. Ltd. v. Mandar Madhav Tambee (3 supra) wherein it was held that a learner having such licence would not be regarded as duly licensed. However, it must be said that subsequently a larger Bench in the case of Swaran Singh's case (1 supra) by taking the above decision into consideration as held as under:

It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licenced resulting in conferring a right on the insurer to avoid the

claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the Act.

Thus, it is clear that a driver holding learner's licence can also be said to be duly licensed and Insurance Company cannot avoid its liability on that ground. However, a person holding learner's licence shall drive the vehicle subject to the conditions mentioned in the said licence. As otherwise, it would amount to breach of conditions of license. In this context when Ex.A6 is viewed, it shows that R1 was issued learner's licence from 02-08-2004 to 01-02-2005 (covering the date of accident with a warning as "The attention of the holder of this licence is drawn to Rule 3 of Central Motor Vehicle rules, 1989 which prohibits him from driving any motor vehicle unless he has besides him a person duly licensed to drive the vehicle and in every case, the vehicle carries "L" plates both in front and in the rear of the vehicle.?

b) However, the evidence would show that R1 and R2 committed violation of conditions of licence inasmuch as R1 failed to had besides him a duly licensed driver and also failed to put up "L" board on the front and rear side of the auto. The Tribunal observed that had such a duly licensed person been there by the side of R1 he would have prevented R1 from causing the accident. Thus, the Tribunal held that the breach committed by R1 is a fundamental breach. The Tribunal further held that R1 and R2 committed another breach of the terms of the policy to the effect that R1 who was the holder of learning licence drove the vehicle with passengers when the terms of the policy expressly prohibited the holder of licence from driving the vehicle with passengers. On these findings the Tribunal exonerated R3 from its liability.

c) On a careful perusal of the facts and evince I hold that the Tribunal was right in exonerating R3. This point is answered accordingly.

9. Point No.2: On this point, we have to refer Swaran Singh's case (1 supra). In that case the Honourable Supreme Court happened to deal with different types of defence pleas touching the driving licence issues taken by the Insurance Companies while admitting the policy. Such pleas are:

- a) Fake driving licences of the driver.
- b) Driver not having licence whatsoever.
- c) No renewal of driving licence as on the date of accident.
- d) Licence granted for one class or description of vehicle but vehicle involved in accident was of different class or description.
- e) Driver holding only a learner's licence.
- a) Regarding the learning licence the Honourable Apex Court held that if the

vehicle at the time of accident was driven by a person having learning licence also the Insurance Company would be liable to satisfy the decree. In the instant case, in the normal course R3/Insurance Company would be held liable to pay compensation since R1 was holding learner's licence at the time of accident. However, as observed in point No.1 supra, since R1 and R2 committed breach of terms of licence and policy, R3's liability is ceased and to this extent there is no demur. What is to be noted here is in Swaran Singh's case (1 supra) the Honourable Apex Court observed that even if the Insurance Companies would successfully establish that the owner and the driver committed breach of conditions of licence and policy and such a breach was so fundamental one to contribute the cause of accident, still the Tribunals can direct the Insurance Company to pay the compensation and recover the same from the owner and driver. The observations of Honourable Apex Court is as follows:

We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause(ii) of clause (a) of sub-section (2) of section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act.

So, it goes to show that the Tribunals and Courts can exercise their discretionary power to direct the Insurance Company to pay and Recover the compensation amount from the owner and the driver depending upon the facts and circumstances of the case on hand. The decision being discretionary, in some of the decisions cited by the parties, the Courts exercised discretion in favour of the claimants and directed the Insurance Company to pay the compensation amount and recover from the owner and driver, whereas in some decisions such a discretion was not exercised.

In one of such decisions reported in the case of G.Sampoorna and others (4 supra) a learned single Judge of this High Court expressed the same view, which reads thus:

In my opinion, from the afore-extracted passage of the judgment, it is evident that direction to the insurance company to pay the compensation does not automatically follow in every case where the insurance company is found not liable. The same depends upon the fact and circumstances of each case. In all the aforementioned cases, which were referred to by the Supreme Court, directions were given on the facts of each case and considering the fact that the provisions of the Act with insurance and payment of compensation are beneficial in nature.

b) The law being so, the point now is: whether a direction can be given to R3/ Insurance Company to pay and recover the amount from R1 and R2.

A perusal of the award would show that the Tribunal, except holding that there was clear breach of conditions of insurance policy and hence R3 is not liable to pay the claim of the petitioners, unfortunately has not considered the aspect of whether or not to direct R3 to pay compensation and recover from R1 and R2 in terms of Swaran Singh's case (1 supra). Hence, in this appeal such a necessity has arisen. The fact would show that the claimants are widow and son of the deceased and they were depending on the earnings of the deceased who was a carpenter. Due to his death, the claimants have lost their dependency. Hence, it is difficult for them to realise compensation amount from R1 and R2. In these circumstances and having regard to the fact that the policy was in force by the date of accident and that the claim was under the provisions of a beneficial legislation, I deem it apposite to direct R3/Insurance Company to pay the compensation amount to the claimants and recover the same from R1 and R2.

10. In the result, MACMA is allowed and while upholding the compensation awarded to the claimants by the Tribunal, R3/Insurance Company is directed to pay the compensation amount with costs and interest to the claimants and recover the same from R1 and R2. R3/Insurance Company is further directed to deposit the compensation amount with costs and interest within one month from the date of this judgment, failing which execution can be taken out against it. As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs in the appeal.