

(2004) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 637 of 2000

Katipalli Yesamma, Katipalli Venkataiah and Katipaloi Pddakka	APPELLANT
Vs	
D.V. Subbareddy and United India Insurance Company Ltd.	RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 252, 252(2), 252(5)
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2006) ACJ 2069 : (2004) 4 ALD 726 : (2004) 5 ALT 222

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Subbarao Korrapati, for the Appellant; Shailaja Arun Dikshit, for the Respondent

Judgement

C.Y. Somayajulu, J.—Appellants, who are the wife and parents of Peda Akkaiah (the deceased) who died due to an accident that occurred on 13.4.1996, when he was traveling in the lorry bearing No. ADF 702 belonging to the first respondent and insured with the second respondent, filed a claim petition seeking compensation of Rs. 1,50,000/-, from the respondents, on the ground that the accident took place due to the rash and negligent driving of the driver of the lorry. First respondent filed a counter, putting the appellants to proof of the allegations in the petition and contending that since the lorry was insured with the second respondent, the compensation has payable to be paid by the second respondent only. Second respondent filed a counter putting the appellants to proof of the allegations in the petition. In support of their case, appellants examined two witnesses as P.Ws. 1 and 2 including the first appellant as P.W.1 and marked Exhibits A1 to A5. First respondent did not adduce any evidence either oral or documentary. Second respondent examined one witness as R.W.1 and marked Exs. B1 and B2. The Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry and awarded Rs.50,000/- as compensation to the appellants on the assumption that the claim is u/s 140 of the Motor Vehicles Act, 1988 (for short "the Act"). Dissatisfied with the

compensation awarded to them and questioning the assumption of the Tribunal that the claim is u/s 140 of the Act, the claimants preferred this appeal.

2. The main contention of the learned counsel for the appellants is that, since the claim petition is filed u/s 166 of the Act, the Tribunal was in error in assuming that the claim is u/s 140 of the Act and restricting the compensation to Rs.50,000/- and it ought to have granted the entire amount claimed by the appellants, keeping in view the age and income of the deceased. There is no representation on behalf of the respondents though notices of the appeal were served on them.

3. Since the respondents did not prefer any appeal or cross objections, questioning the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry, and since the Tribunal committed an error in observing in paragraph-I of its award that the claim is u/s 140 of the Act, when in fact the claim is made u/s 166 of the Act, the point for consideration in the appeal is to what compensation are the appellants entitled to and from whom?

4. The evidence of P.W.1 is that he, the deceased and others after attending the work of sugar cane cutting as coolies were proceeding from Eluru to Guntur with their implements and utensils in the lorry by each of them paying Rs.25/- to the driver of the lorry and that the deceased who was aged 32 years is earning Rs.90/- per day as cooli. Since P.W2 did not speak anything about the age and earning of the deceased his evidence is not relevant for deciding this appeal.

5. Since the deceased was an agricultural cooli, coming from a rural area, and since the allegation in the F.I.R. (Ex.A1) shows that the deceased and others moved out the village for doing agricultural cooli work, and since the accident occurred in the year 1996, the average earnings of the deceased can be taken as Rs.900/- p.m. at Rs.30/- per day, and so his contribution to the appellants can be taken as Rs.600/- p.m. or at Rs.7,200/- p.a.

6. Since Ex. A4 the Post Mortem examination report of the deceased shows that he was aged about 32 years, and since the evidence of P.W.1 also is that the deceased was aged about 32 years, the age of the deceased can be taken as 32 and so the appropriate multiplier would be 16. So the appellants are entitled to $\text{Rs.720} \times 16 = \text{Rs. 1,15,200/-}$ towards pecuniary damages.

7. Since the first appellant lost her husband, she is entitled to Rs.15,000/- towards loss of consortium. As per the ratio in Y. VARALAKSHMI Vs. M. NAGESWARARAO , appellants are entitled to Rs.15,000/- towards now pecuniary damages.

8. Thus, the appellants are entitled to $\text{Rs.1,15,200/-} + \text{Rs.15,000/-} + \text{Rs.15,000/-} = \text{Rs.1,45,200/-}$ as compensation for the death of the deceased.

9. The Tribunal, on the basis that the deceased was traveling with his goods in the lorry held that the insurer also is liable to pay the compensation payable to

the appellants, obviously, without taking into consideration the definition of "goods" in the Act, and Rule 252 of A.P. Motor Vehicles Rule 1989 (for short, "the Rules") which reads:

Carrying of persons in goods vehicle carriage:-

(1) No person shall be carried in the cab of a goods vehicles beyond the number for which there is seating accommodation at the rate of 284 millimeters measured along the seat, excluding the space reserved for the driver for each person and not more than (seven persons in all) shall be carried in any goods vehicle.

(2) No person shall be carried in a goods vehicle upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle and in no case shall any person be carried in a goods vehicle, in such a manner that any part of his person when he is sitting position is at a height exceeding 3 meters from the surface upon which the vehicle rests;

(3) No person other than a person connected to the conveyance of goods shall travel in a goods vehicles;

(4) Notwithstanding the provisions of Sub-rule(1) the Regional Transport Authority or the State Transport Authority, may subject to such conditions as it thinks fit allow a large number of persons to be carried in a goods vehicle.

(5) Nothing in this rule shall be deemed to authorise the carriage of any person for hire or reward on any goods vehicle, unless there is in force in respect of the vehicle a permit authorizing the use of the vehicle for such purpose, and save in accordance with the provisions of such permit.

Since Ex.A1 F.I.R. shows that the deceased, P.W.1 and others numbering 36 boarded on the load of fertilizers bags, being transported in the lorry, they must have sat on the fertilizer bags in violation of Rule 252 (2) of the Rules. Rule 252(5) of the Rules, prohibits carrying of persons for hire or reward in a goods vehicle, since there is nothing on record to show that first respondent was having permit to carry 36 persons, as fare paying passengers in his lorry, which was taking a load of fertilizers bags. So this is a case where the driver of the lorry, in violation of the provisions of the Act and Rules, allowed 36 passengers travelling in the lorry, by taking fare from them.

10. The policy issued by the second respondent admittedly is an Act policy, which does not cover the risk of passengers traveling in the goods vehicle. So second respondent is not liable to pay the compensation payable to appellants. But since second respondent did not prefer cross objections, in respect of the award passed against it for Rs.50,000/-, I do not wish to interfere with the award passed by the Tribunal, making the second respondent liable for Rs.50,000/- and interest thereon. But the enhanced amount of Rs.95,200/- awarded in this appeal, second respondent cannot be made liable because the deceased was travelling in a goods vehicle as a passenger in violation of the provisions of the

Act and the Rules.

11. Learned counsel for the appellants relying on NATIONAL INSURANCE COMPANY Vs. SWARANSINGH & OTRS. contends that the second respondent also should be made liable to pay the entire compensation in the first instance and that it can recover the amount so paid from the first respondent. I am unable to agree with the said contention since the decision relates to non fare paying passengers. In this case the driver of the lorry carrying a load of fertilizers, had in the mid-way allowed 36 passengers, to board the lorry and allowed them to sit on the load of fertilizers, by taking fare from all of them. It clearly means that the driver of the lorry used it as a stage carriage but not as a goods vehicle and violated the provisions of the Act and Rules and so 2nd respondent insurer cannot be made liable for payment of the entire compensation payable to the appellants. But as stated earlier, since the second respondent did not prefer an appeal or cross objections, I do not wish to interfere with the award of the Tribunal.

12. So, I hold that appellants are entitled to a compensation of Rs.1,45,200/- from the first respondent out of which the liability of the second respondent, as fixed by the Tribunal is Rs.50,000/-. The point is answered accordingly.

13. In the result, the appeal is allowed in part and an award is passed for Rs.1,45,200/- in favour of the appellants against the first respondent with interest at 12% p.a. on Rs.50,000/- from the date of petition till the date of deposit into Court and with interest at 9% p.a. on Rs.95,200/- from the date of award of the Tribunal i.e. 30-07-1999, till the date of deposit into Court. Appellants are entitled to proportionate costs in the Tribunal. Rest of their claim is dismissed without costs. Second respondent is jointly and severally liable to pay Rs.50,000/- to the appellants with interest at 12% p.a. from the date of petition till the date of deposit and proportionate costs in the Tribunal. From out of the said amount, second appellant is entitled to Rs.20,000/- and interest thereon, third appellant is entitled to Rs.55,100/- and interest thereon, and the first appellant is entitled to Rs.70,100/- and interest thereon. Parties shall bear their own costs in this appeal.