
(2008) 02 AP CK 0076
In the Andhra Pradesh High Court
Case No : CMA No. 2246 of 2000

Konda Anuradha and Others	Vs	APPELLANT
Gopi Reddy Venkat Reddy and Another		RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 161

Citation : (2009) ACJ 708 : (2008) 3 ALD 355 : (2008) 4 ALT 34

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : P. Ramakrishna Reddy, for the Appellant; A.V.K.S. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—The appellants are the claimants/petitioners in O.P. No. 411 of 1996 on the file of the Motors Accidents Claims Tribunal-cum-I Additional District Judge at Nalgonda (henceforth referred to as "the Tribunal"). The 1st claimant is the wife; the 2nd and 3rd claimants are the son and daughter; and the 4th claimant is the mother of one Konda Venkataiah, who is said to have died in a motor accident on 25.12.1994. The claim was laid seeking compensation of Rs. 8.00 lakhs.

2. The 1st respondent is the owner of a Tractor and Trailer, while the 2nd respondent is the insurer of the said vehicle. In support of the claim the appellants have examined two witnesses and got marked Exs.A.1 to A. 10. The 1st respondent remained ex parte and the insurance company got marked the copy of the policy as Ex.B.1.

3. It is the case of the claimants that the deceased Konda Venkataiah was returning from Rayanigudem Village to Nalgonda on his scooter bearing registration number A.P. 24-1759. When he reached the outskirts of Aitipamula Village a Tractor and Trailer bearing registration numbers A.P.24-U-91 and A.P.

24-U-92, driven in a rash and negligent manner had hit the scooterist and thus caused the accident. It is alleged that Konda Venkataiah, who sustained grievous injuries, succumbed to those injuries immediately. It is further said that the deceased Konda Venkataiah was working as a Junior Assistant with the Tribal Welfare Department of the State Government of Andhra Pradesh at Nalgonda and was drawing salary of Rs. 3,000/- per month at the time of his death.

4. The 2nd respondent, who had contested the claim, had disputed the very accident involving the Tractor and Trailer referred to supra. Therefore, they called upon the claimants to establish that the accident in question had taken place involving the said vehicle. The insurance company has also called upon the claimants to establish that it's driver, at the relevant point of time, was having a valid driving licence. The 2nd respondent has also alleged that from the nature of the accident, it occurs as though the scooterist got confused because of the glare of the headlights of the oncoming motor vehicles and in the process, contributed wholly to the accident, and, therefore, the claimants are not entitled to seek any compensation from them. It is also further asserted that the owner of the scooter and the insurer of such a motor vehicle are both necessary and proper parties to the O.P. and that in their absence the claim is not liable to be adjudicated at all.

5. The 1st claimant-wife has been examined as PW.1. She narrated the relationship of the petitioners/claimants with the deceased. She did not claim any first hand knowledge to the accident. She deposed that an Attender working with the Tribal Welfare Department, in which department her husband was working as a Junior Assistant, reported about the accident and that is how she came to know of the accident. Therefore, not much turns on the deposition of PW. 1, except with regard to the nature of relationship of the claimants/appellants with the deceased and the nature of employment of the deceased and that salary and other particulars relevant insofar as the deceased is concerned.

6. PW.2 has been examined as an eye-witness to the accident. PW.2 is a native of Rayanigudem Village. He has deposed that while he and another friend of his, were proceeding on foot around 6.30 p.m. on 25.12.1994, they saw the Tractor and Trailer in question proceeding towards Rayanigudem and, therefore, they solicited its driver to give them lift upto their village, namely; Rayanigudem. PW2 asserted that when the Tractor and Trailer reached the culvert of Aitipamula Village, it had hit a Vespa Scooter coming on the opposite side. But, the vehicle has not been stopped by it's driver. PW.2 has further deposed that the 1st respondent-owner of the vehicle had prevailed on him from not disclosing the accident to the police, but however, sometime during October next year, the police have enquired from him and thus, he informed the police as to how the accident has taken place.

7. The learned Tribunal had described the evidence of PW.2 as absolutely artificial and unbelievable. It has suspected the presence of PW.2 at the accident site at all. The Tribunal has noticed that Ex.A.1 is the complaint lodged by the brother-in-law of PW. 1 with the Kattangur Police Station reporting about the accident.

Then Crime No. 121 of 1994 has been registered by the police and investigated upon. Thus Ex.A.1-complaint is lodged by the brother-in-law of PW.1, who is none other than the brother of the deceased. It is he, who last saw the deceased at Rayanigudem Village, where he resides. He merely said in his complaint Ex.A. 1 that an un-known motor vehicle has caused the accident, due to which the deceased Konda Venkataiah died. The police have carried out the investigation into the crime for quite sometime and submitted a final report setting out that the same is undetectable, as it is a hit and run case. Thus the matter is closed sometime during April/May, 1996. But however, sometime during October, the police seemed to have recorded the statement of PW.2 and on that basis the charge-sheet Ex.A.3 has been drawn and filed into the case. The Tribunal has, therefore, rightly commented that as to how the police could suspect the involvement of the vehicle in question and that PW.2 was, in fact, an eye-witness to the accident, remained unexplained and illusive. This missing link has not been explained at all with reference to any cogent material on record. In the absence thereof, the Tribunal has inferred that PW.2 has been planted, obviously, at the behest of the brother-in-law of the 1st claimant. As is noticed supra, the person, who lodged Ex.A1-complaint has not been examined nor, did they examine any police official, who could detect, with reference to valid material on record, the involvement of the Tractor and Trailer in question. Therefore, the Tribunal had rightly did not place reliance upon the deposition of PW2 and consequently, it did not believe that the accident was caused by the Tractor and Trailer in question.

8. Hence, no liability can be fastened on to the 2nd respondent-insurer of the Tractor and Trailer in question. After all, the liability of the insurer is coextensive along with the owner of the vehicle in question and unless the said owner incurs any such liability due to involvement of the insured motor vehicle in an accident causing the death of Konda Venkataiah, the liability of the owner of the vehicle and that of the insurer of such a vehicle,, becomes illusive. Unfortunately, the claimants could not establish the involvement of Tractor and Trailer in the accident in question, which have been insured by the 2nd respondent.

9. In this set of circumstances, it will be very difficult to come to the conclusion that the findings returned by the Tribunal in O.P. No. 411 of 1996 are either perverse or so thoroughly unjust so as to shock the conscience of any impartial body of men. For sheer lack of material to establish, with any reasonable sense of accuracy, the involvement of the Tractor and Trailer in question, in the accident causing the death of the deceased Konda Venkataiah, the liability could not be fastened on to the owner of such a vehicle and consequently, the obligation of the insurer to compensate the legal heirs of the victim does not arise.

10. For these reasons the civil miscellaneous appeal is dismissed, but, however, in the circumstances, without costs.

11. However, it is open to the claimants to seek compensation either u/s 140 or u/s 161 of the Motor Vehicles Act, 1988 as the deceased Konda Venkataiah died

in an accident involving one motor vehicle or the other.