

(1989) 01 AP CK 0003

In the Andhra Pradesh High Court

Case No : C.M.A No's. 1288 and 1412 of 1984 and Cross-objections

M. Janga Reddy

APPELLANT

Vs

Shaik Mahboob and Others

RESPONDENT

Date of Decision : 27-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95(2)

Citation : (1989) ACJ 1016

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : M.C.V. Chowdary, for the Appellant; V. Rajagopala Reddy, S. Hanumaiah and K. Srinivasamurthy, for the Respondent

Final Decision : Allowed

Judgement

K. Ramaswamy, J.—The only point that arises for consideration in this appeal is, whether the hirer is liable for payment of damages for the loss of life of the deceased, Suseela, wife of the first claimant and mother of claimant Nos. 2 to 4?

2. The admitted facts are that on 16.6.1982, at about 7.00 a.m., the bus bearing No. ADT 4787 was driven in a rash and negligent manner and at a high speed from Moula Ali towards Ghatkesar, went to the extreme left side of the road, ran out of the road and struck down into a ditch, killing the deceased Suseela, a passenger travelling in the bus. The bus belongs to Vijayanti Ballal, the 2nd Respondent in the Tribunal below and the 3rd Respondent in the Tribunal below, Ballal Tourist Corporation has taken the vehicle on hire from the 2nd Respondent in the Tribunal below. The 1st Respondent in the Tribunal below is the driver. It is the case of the Appellant that Suseela, the deceased, was gratuitously taken by the driver, without any authority and that, therefore, the 3rd Respondent-Appellant is not liable for the unauthorised acts committed by the driver. The defence taken by the claimants is that she has paid a sum of Rs. 5/- as a reward to carry her on the bus and that, therefore, she was authorised to be a passenger. The vehicle is a passenger vehicle, though contracted for and as a

result, the hirer is liable for the tortious acts committed by the driver. This plea was accepted by the Tribunal below. PWs 1 and 2 have stated in their evidence that en route the route, the driver took up and set down the passengers, collecting Rs. 5/- from them. This clearly shows that though the vehicle was contracted to carry the employees to the Electronic Corporation of India Limited, it is used as stage-carriage, by collecting the fare, as a regular service vehicle, by picking up and setting down passengers en route the route. Therefore, the finding recorded by the Tribunal below is clearly based on evidence. When once this evidence is accepted, then admittedly, the Appellant, having appointed the first Respondent in the Tribunal below as a driver, is liable for the tortious acts of the driver. Accordingly, the owner is also coextensively liable for the tortious acts of the driver, the 1st Respondent. The Tribunal below has awarded a sum of Rs. 55,000/- and that order has become final as against the insurance company. Therefore, I do not find any illegality warranting interference. The appeal is accordingly dismissed. No costs.

27.1.1989

3. The appeal and cross-objections arise against the same judgment In fact the Appellant, Oriental Fire and General Insurance Company Ltd., is the 5th Respondent in O.P. No. 145 of 1982 of the Tribunal below. The second Respondent Vijayanti Ballal is the owner of the vehicle contract carriage bearing No. ADT 4787. The 1st Respondent Shaik Mahboob is the driver. The vehicle was taken on contract by the 3rd Respondent Ballal Tourist Corporation from the 2nd Respondent on hire. The hirer carries the employees of the E.C.I.L., the 4th Respondent, to and fro from their respective houses to the factory. On June 16, 1982 the deceased Suseela who is a wife of one of the employees was travelling in the contract carriage. The driver has collected a fare of Rs. 5/- . He was collecting the passengers for reward. When the accident occurred on June 16, 1982 at about 7.00 a.m. due to the rash and negligent driving of the first Respondent, the deceased Suseela died. As a result, her husband and the minor children claimed u/s 110-A of the Motor Vehicles Act, 1939 before the Tribunal below. The Tribunal awarded in total a sum of Rs. 55,000/- . As against the compensation awarded, the hirer filed C.M.A. No. 1288 of 1984 which was dismissed by judgment dated January 17, 1989. At that time the cross-objections filed by the claimants were not posted along with that C.M.A. Therefore, the cross-objections were not disposed of. The insurance company, the 5th Respondent, filed C.M.A. No. 1412 of 1984 in which also same cross-objections have been filed by the claimants. Thus, the cross-objections in C.M.A. No. 1288 of 1984, C.M.A. No. 1412 of 1984 and the cross-objections therein are now posted together.

4. The contention of the insurance company as argued by Mr. S. Hanumaiah, the Learned Counsel, is that the insurance company is liable and its liability is coextensive with that of the insured, viz., the owner of the vehicle Vijayanti Ballal. The Tribunal has dismissed the O.P. as against the insured; therefore, the

insurance company is not liable to make the damages suffered by the hirer. It is alternatively contended that the liability should be limited to Rs. 10,000/- by operation of Sub-section 2(b) of Section 95 of the Motor Vehicles Act, Act IV of 1939 (for short "the Act").

5. The contention of the Learned Counsel for the claimants is that the Judicial Officer presiding the Tribunal initially awarded a sum of Rs. 1,00,000/- towards damages. But, when it is set aside at the behest of the Respondents the learned Judicial Officer committed grievous error in restricting the claim only to Rs. 55,000/- . The claimants, namely, the husband and the children lost the services of the deceased Suseela, the wife of the first claimant and the mother of the claimant Nos. 2 to 4. The children being minor have lost the motherly care and affection, the grant of a sum of Rs. 1,00,000/- would be the minimum and the grant of Rs. 55,000/- is arbitrary. The first question therefore is whether the amount awarded by the Tribunal below is just and reasonable? Admittedly, the deceased is a housewife. She is not having any avocation for herself. She was looking after the household affairs. It is claimed that she was also looking after the agriculture. It is very doubtful whether she was looking after the agricultural operations. The Tribunal below has accepted that and granted annual expenditure to be incurred by the husband for household work as Rs. 2,000/- and applied suitable multiplier and granted a sum of Rs. 30,000/- . The balance amount was awarded towards loss of motherly care and affection and the company of the husband. Thus, the total amount of Rs. 55,000/- was awarded. On the totality of the facts and circumstances, I am of the view that grant of Rs. 55,000/- is just and reasonable.

6. The next question is whether the insurance company is liable for the payment of the amount. No doubt the insured is Vijayanti Ballal, the owner. She transferred her right to user of the vehicle as a contract carriage on hire to the 3rd Respondent, Ballal Tourist Corporation. Therefore, the right of liability to third parties would be transmitted to the user, namely, Ballal Tourist Corporation. When the vehicle was involved in an accident and the vehicle is covered by the policy, for the third party claims necessarily the insurance company should bear the expenses for the liability incurred towards the loss in the death of a passenger carried by the vehicle. Thereby the insurance company is liable for the death of Suseela, the deceased. Now, what is the liability to which the insurance company should be limited? It is now well settled by the decisions of the Supreme Court and this Court that the maximum liability is Rs. 10,000/- prior to the amendment Act. Therefore, the Appellant is liable to pay a sum of Rs. 10,000/- . It is stated that the amount has already been deposited. Under these circumstances, it is declared that the liability of the insurance company is only Rs. 10,000/- and for the balance amount the claimants are entitled to recover from the Ballal Tourist Corporation, the hirer. The claimants are, however, entitled to the interest at 12 per cent on the amount awarded from the date of claim till the date of realisation.

7. The appeal is allowed as indicated above. The cross-objections are also allowed accordingly. No costs.