
(2007) 06 AP CK 0052
In the Andhra Pradesh High Court
Case No : C.M.A. No. 997 of 2001

Manager, Oriental Insurance Co. Ltd.	Vs	APPELLANT
Vallabhani Surya Rao and Others		RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(25)
Motor Vehicles Act, 1988 — Section 147, 2(35)

Citation : (2008) ACJ 2215

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : A. Krishnam Raju, for the Appellant; B. Parameswara Rao, for the Respondent

Judgement

G.V. Seethapathy, J.—This appeal is directed against order dated 1.2.1996 in O.P. No. 370 of 1991 on the file of Motor Accidents Claims Tribunal-cum-Addition-al District Judge, West Godavari at Eluru ("the Tribunal"), wherein the claim of the respondent Nos. 1 and 2 herein was allowed in part awarding a compensation of Rs. 25,000 with interest at 12 per cent per annum from the date of the petition.

2. Respondent Nos. 1 and 2 herein filed the claim application before the Tribunal seeking compensation of Rs. 50,000 on account of death of their deceased daughter Vallabhaneni Amaravathi, who died in a motor vehicle accident that occurred on 26.2.1991. According to the claimants, on that day, when the deceased was going by walk from Nandamuru to Kovvur to attend school, a tractor bearing No. AP 37-U 148 and trailer No. AP 37-U 149 driven by the respondent No. 1 in a rash and negligent manner at high speed dashed against the deceased and ran over her near Cherukuri Rama Rao's cattle shed, as a result of which the deceased sustained injuries and died while being shifted to hospital.

3. Respondent No. 1, driver of the tractor and respondent No. 2, owner of the tractor remained ex parte.

4. Respondent No. 3, insurer, filed a counter opposing the claim and denying their liability to pay compensation and further contending that the deceased was travelling in the tractor sitting on a plank behind the driver along with another girl and fell down and such a travel as a passenger on the tractor is in gross violation of terms and conditions of the policy and, therefore, the insurer is not liable to pay compensation.

5. On the strength of the pleadings, the Tribunal framed the following issues:

(1) Whether the accident is due to rash and negligent driving of the tractor bearing No. AP 37-U 148 and trailer No. AP 37-U 149 driven by respondent No. 1?

(2) Whether the petitioners are entitled to claim compensation, if so, to what amount and against which of the respondents?

(3) To what relief?

6. PWs 1 and 2 were examined and Exhs. A1 and A2 were marked on the claimants' side. No oral evidence was adduced by the respondents. Exh. B1, copy of the policy was marked.

7. On a consideration of the evidence on record, the Tribunal gave a finding on issue No. 1 that the accident was not due to fault of the driver. The Tribunal awarded compensation of Rs. 25,000 under "no fault liability" and accordingly, an award was passed for the said amount with interest at 12 per cent per annum from the date of the petition against all the respondents before the Tribunal.

Aggrieved by the same, the insurer preferred the present appeal.

8. Arguments of the learned Counsel for the appellant and respondents are heard. Records are perused.

9. Learned Counsel for the appellant contended that the version of the claimants put forward in their evidence as to the manner in which the accident occurred is totally at variance with the earliest version contained in the F.I.R., Exh. A1, which was registered on the basis of the complaint given by PW 1 himself and the evidence on record does not establish that the deceased died on account of rash and negligent driving of the tractor by its driver. He would further contend that even otherwise, the deceased being admittedly an unauthorised passenger on the tractor, which is a goods vehicle, the appellant insurer is not liable to pay compensation.

10. Learned Counsel for respondents, on the other hand, contends that the evidence on record showed that the accident occurred only due to rash and negligent driving of the tractor by its driver, but in spite of it, the Claims Tribunal awarded the statutorily prescribed compensation of Rs. 25,000 under "no fault liability" and the award does not, therefore, call for any interference.

11. In view of the rival contentions of the parties, the first and foremost question which arises for consideration in this appeal is whether the appellant insurer is

liable to pay compensation awarded by the Tribunal?

12. In the claim application, it is stated that on 26.2.1991, while the deceased was going by walk towards Kovvur to attend school, the tractor driven at high speed and in a rash and negligent manner dashed against the deceased. In the evidence, PW 2, who claims to be an eyewitness to the accident reiterated the same version. In the cross-examination, he denied the suggestion that the deceased was travelling in the tractor and slipped and fell. PW 1, father of the deceased, admittedly, did not witness the accident. The F.I.R., Exh. A1, was however registered on a complaint given by PW 1. In the cross-examination, PW 1, denied the correctness of the contents of Exh. A1. A perusal of Exh. A1 shows that the complaint was given within one hour after the accident on 26.2.1991. In Exh. A1, PW 1 has stated at the earliest point of time that while the deceased was travelling from Nandamuru to Kovvur on the tractor to attend the school, the driver of the tractor drove the vehicle at high speed and in a rash and negligent manner, as a result of which the deceased, who was sitting on the plank behind the driver fell down and the tractor ran over the deceased. The driver took her to Kovvur Government Hospital on the tractor and PW 1 came to know of it through Sunitha, another girl who was travelling along with the deceased. The claimant has, therefore, given a complete go by to the earliest version contained in F.I.R., Exh. A1, lodged by PW 1 himself and put forward a different version in the claim application to the effect that when deceased was going by walk along the side of the road, the driver of the tractor dashed against her. The evidence of PW 2, an alleged eyewitness to the accident is also contrary to the averments of F.I.R., Exh. A1. The Tribunal has rejected the evidence of PW 2 and gave a finding that the claimants are entitled for compensation under "no fault liability", which presupposes that the driver was not at fault. The claimants have not filed any appeal questioning the said finding or the quantum of compensation. Exh. A1 shows that the tractor was driven at high speed and in a rash and negligent manner by its driver, respondent No. 1. Even the version of PW 2 is to the effect that the tractor was driven in a rash and negligent manner by its driver. The finding of the Tribunal that the claimants are entitled to compensation only under "no fault liability" has become final in so far as the claimants are concerned, as they have not questioned the said finding. The only question, which remains for consideration is whether the appellant insurer is liable to pay the compensation awarded by the Tribunal?

13. As per the contents of F.I.R., Exh. A1, the deceased was travelling sitting on the plank behind the driver on the tractor. It is not disputed that the tractor is a goods vehicle and the deceased was, therefore, travelling as unauthorised passenger in a goods vehicle. It is obvious that to get over the difficulty in fastening liability on the insurer, the claimants have put forward a new version in the evidence by saying that the deceased was going by walk along the side of the road giving a go by to earlier version contained in F.I.R., Exh. A1, that the deceased was travelling on the tractor. Admittedly, Exh. B1, copy of the policy does not cover the risk in respect of any passenger travelling by the tractor.

14. In *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , the Apex Court held that:

(9) ...On the other hand, it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury...

It was further held,

(23) The applicability of the decision of this Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , in this case must be considered, keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that "goods carriage" would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a "goods carriage", thus, is not contemplated under the 1988 Act.

15. The above decision was reiterated by the Apex Court in *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others*, , wherein the Apex Court held as follows:

Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

16. In *New India Assurance Co. Ltd. v. Vedwati* 2007 ACJ 1043 (SC), the Apex Court held:

(14) ...that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

In view of the principles laid down by the Supreme Court in the above decisions, no liability can be fastened on the insurance company in respect of the risk of unauthorised passengers travelling in a goods carriage vehicle. The deceased girl, who was aged 12 years and was travelling by the tractor for the purpose of reaching her school, is certainly an unauthorised passenger whose risk is not

covered by the policy, Exh. B1. The appellant insurer is, therefore, not liable to pay compensation awarded by the Tribunal.

In the circumstances and for the reasons stated above, the appellant insurer is held not liable to pay the compensation amount awarded by the Claims Tribunal. The award dated 1.2.1996 passed by the Tribunal on O.P. No. 370 of 1991 is modified accordingly.

17. In the result, the appeal is allowed in part as stated above. No order as to costs.