
(2014) 04 AP CK 0050
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 148 of 2007

Manda Veeresham

APPELLANT

Vs

Ahmed

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

General Clauses Act, 1897 — Section 27

Citation : (2014) 04 AP CK 0050

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : P. Pankaj Reddy, Advocate for the Appellant; N.S. Bhaskara Rao, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.

1. The claimants, who are the grand-parents of the deceased girl, namely, T. Sravanthi, aged about 16 years, aggrieved by the dismissal of the claim petition against the insurer, and owner, and granting compensation of Rs. 52,000/- out of the claim of Rs. 3,00,000/- only against the 1st respondent driver of the lorry bearing registration No. AEO 2345 with interest at 6% per annum, by award dated 14.08.2006 passed by the learned Chairman of the Motor Accident Claims Tribunal-cum-IV Additional District & Sessions Judge at Karimnagar (for short, "the Tribunal") in O.P. No. 835 of 2005, preferred the appeal with contentions in the grounds of appeal that the Tribunal grossly erred in dismissing the claim against the insurer and the owner, despite the policy covered the risk, and that the Tribunal, after setting the driver and owner of the vehicle ex parte, ought to have fastened the liability on them and hence to allow the appeal by fixing joint liability for the claim prayed for.

2. Heard the learned counsel for the appellants/claimants and the learned counsel for the 3rd respondent/Insurer. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. It is the contention of the learned counsel for the insurer, 3rd respondent in this appeal as well as in the claim petition, by relying upon the expression of this Court in *V. Raja Reddy Vs. T. Venkata Subbarao and United India Insurance Co. Ltd.*, that the Tribunal was right in dismissing the claim against the insurer as well as owner, that the observation of this Court in the said case referring to the expression of the Apex Court in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, equally applies to the present facts and that, therefore, prayed for dismissal of the appeal.

4. On 08.04.2005 at 8.00 a.m. the grand-daughter of the claimants boarded an auto along with other passengers to go to Huzurabad and from there to Mulkanoor in connection with "Chekkarakundukala festival" and when the auto reached near Ayyappa Swamy Temple, Jammikunta, a lorry bearing registration No. AEO 2345 came in opposite direction and dashed the auto. As a result of which, the girl died. The grand-parents of the deceased girl laid for compensation of Rs. 3,00,000/- and the Tribunal awarded only Rs. 52,000/- only against the 1st respondent driver of the offending vehicle. Impugning the said quantum as utterly low, they preferred the appeal.

5. Now the points that arise for consideration in the appeal are:

"1. Whether the award of the Tribunal dismissing the claim against the owner and insurer and fixing the liability only on the driver is sustainable, so also, the quantum of compensation and the rate of interest are low, and if so, with what observations and conclusions?

2. To what result?"

6. POINT No. 1:

The fact that the accident was the result of rash and negligent driving of the driver of the crime lorry of the 2nd respondent that was driven by the 1st respondent and insured with the 3rd respondent is not in dispute for purpose of the appeal.

7. In the expression of *V. Raja Reddy (supra)* at para 8, it was observed that in the facts of that case, when an appeal came for disposal in the year 2010 for the accident took place in the year 1992, the Court could not feel it just to afford an opportunity to the claimants to take steps against the owner of the vehicle at this stage, in which event the owner as well as the Insurance Company will be subjected to much hardship and inconvenience. Therefore, following the ratio laid down by the Apex Court in the expression in *V. Sunitha Rathi (supra)*, it was held that the learned Tribunal below is perfectly justified in dismissing the claim petition filed by the claimants holding that without fixing any liability on the owner of the vehicle, the Insurance Company cannot be fastened with any liability to pay compensation. In fact, a copy of the judgment in *V. Sunitha Rathi (supra)*, is not placed before this Court as to what is the ratio laid down therein. If it is the contention of the insurer that the principle laid down therein is that

once the claim is dismissed against the owner for default for non-payment of batta or process, the insurer has to indemnify the owner without the owner, the question of indemnifying the insured does not arise before the claims Tribunal and there is no quarrel on the proposition as well settled. However, whether there was any non diligence in filing of process or in prosecution of the matter is depending upon the facts of each case to be appreciated, thereby, what is the conclusion arrived at in V. Raja Reddy (supra) at para 8 in the facts of that case is no way precedent to the present facts and also for the reason that the claim is of the year 2005 and the award of the Tribunal was dated 14.08.2006 in O.P. No. 835 of 2005.

8. A perusal of the original record shows that the O.P. was numbered on 19.11.2005 and notice was ordered to three respondents returnable by 27.12.2005. The three respondents are driver, owner and insurer of the offending lorry. Once a registered notice is ordered, there is a presumption of due service under Section 27 of the General Clauses Act, even there was no acknowledgment received. In fact, from the above, the endorsement of the V Additional District Court, Karimnagar, after the O.P. was numbered and made over by ordering notice by the Principal District Court, Karimnagar, on 21.11.2005, was "issue notice to respondents by 16.12.2005". On 16.12.2005 it was endorsed "await notice of R.1 & R.2 and though notice served on R.3, he was called absent and set ex parte and it was ordered "therefore notice to R.1 and R.2". Later, vakalat was filed for R.3 and R.3 was permitted to contest i.e., the insurer. R.1 was served and set ex parte on 29.12.2005 and again ordered fresh notice on that day for R.2. There is nothing to show in the endorsements that on 16.12.2005 or on 29.12.2005 as to what happened to the notice on R.2 whether served or returned unserved. Even as discussed supra, despite posted "await notice of R.1 & R.2" and ordered fresh notice, and even for the fresh notice complied with, R.1 alone was served and set ex parte and service of R.2 whether effected or not is even mentioned. It is not as if there was no total non-compliance, that too, once notice is taken by registered post under Section 27 of the General Clauses Act, there is a deemed service of notice. The Tribunal could not have proceeded as if there is no compliance with the filing of process as already filed and issued, much less to say, there is non diligence of prosecution. It is the fundamental principle of law that the act of Court shall prejudice no man otherwise sanctioned by law. When there is a deemed service, the presumption is supposed to be drawn by the Court, even though there is a deficiency on the part of the claimants and their advocate in bringing the fact to the notice the Court, could have taken it into consideration. Once it is such a case from the present facts, the dismissal of the claim against the owner and consequently against the contesting insurer is unsustainable and, thereby, it is a fit case to remand the matter to the Tribunal to consider referring the service Or return of the notice of R.2 from the material on record before the trial Court, and once notice issued thrice by registered post to R.2 and there is a deemed service, the Tribunal has to consider afresh from the deemed service why cannot be available against the

2nd respondent owner of the vehicle, if not to afford opportunity to order fresh notice to the 2nd respondent and from the evidence on record and if necessary to take fresh evidence and give disposal afresh. Accordingly, point No. 1 is answered.

POINT No.2:

9. In the result, the appeal is allowed, by setting aside the award, dated 14.08.2006, passed by the Tribunal in O.P. No. 835 of 2005 and the matter is remanded to the Tribunal for fresh consideration and disposal. There shall be no order as to costs.

10. Miscellaneous petitions, if any, pending in the appeal shall stand closed.