

(2000) 09 AP CK 0082
In the Andhra Pradesh High Court
Case No : AAO No. 1783 of 1993

Medikonda Narasamma and others

APPELLANT

Vs

Shaik Basheer Ahmed and others

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 93(4)
Motor Vehicles Act, 1988 — Section 168, 96

Citation : (2002) 1 ACC 688 : (2001) 1 ACC 560 : (2002) ACJ 688 : AIR 2001 AP 114 : (2001) 1 ALD 1 : (2000) 6 ALT 750

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Mr. C.C.S Sastry, for the Appellant; Mr. M.V.R. Narasimha Charyulu, Mr. B. Rama Rao, for the Respondent

Judgement

1. This appeal has filed by the claimants in OP No.41 of 1989 on the file of Motor Accidents Claims Tribunal, West Godavari District, Eluru.

2. The facts of the case in brief are as follows:

On 13-6-1988 at about 11.00 a.m. a lorry bearing No.AHK 2349 was stationed in a narrow lane before the Transport Office, Tanuku. It was stationed precariously and in slanting position. The 1st respondent is the Driver of the lorry. The lorry was loaded with cotton bales and it is stated that they were not tightly fastened. The height of the lorry with load is 14" from the ground level, which is in violation of the Motor Vehicles Rules. When the hamalies climbed the lorry, one of the heavy cotton bales, which was in loose condition, slipped and fell on the deceased, who was standing on the road margin. He sustained a fatal injury and while he was being taken to the hospital, he died on the way. The 2nd respondent is the owner of the Lorry. The 3rd respondent is the Transport Corporation and 4th respondent is the Insurance Company. On account of the death of the deceased, the claimants, who are the wife and children, filed OP before the Tribunal.

3. Before the Tribunal, respondents 1 and 2 were set ex parte. The 3rd and 4th respondents filed their counter denying the allegations made in the OP. The 4th respondent Insurance Company subsequently filed another additional counter-affidavit contending that the policy issued by the Company does not cover the risk of the alleged accident, and therefore the Insurance Company is not liable to pay the compensation. After framing the issues, the Tribunal examined the witnesses, and rejected the claim of the claimants on the ground that the accident took place due to wrong handling of the cotton bales by the hamalies and there is no negligence on the part of the driver-1st respondent, and therefore, respondents 1 to 4 are not liable to pay the compensation. Aggrieved by the same, the present Appeal has been filed.

4. It is contended by the learned Counsel for the appellants that since the lorry was stationed precariously, the mishap took place due to the negligence of the driver, and hence, the respondents are liable to pay compensation to the claimants. He also contended that height of the lorry exceeds the ramble height.

5. The Counsel for the appellants further contended that the accident in this case took place during the use of the motor vehicle only, and such use need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense that the expression should be read as used in common parlance, and as such, the accident should be held to have taken place during the "use" of the Motor Vehicle. The test whether the accident was reasonably proximate to the use of a motor vehicle, or whether or not the motor vehicle was in motion, will then have to be decided. The provisions for dealing with the award of compensation being intended for a sublime social objective, their Lordships of the High Court of Kerala on the said principle gave a finding declining to give a narrow interpretation for the word "use" and held that the Insurance Company is liable to pay the compensation.

6. The next contention urged by the learned Counsel for the appellant is that the learned Judge has rejected the claim of the appellants on the ground that Condition No.2 of the policy specifically stated that, the company shall not be liable to pay compensation in respect of death, injury or damage caused or arising beyond the limits of any carriage way or the thoroughfare in connection with the bringing of load to the motor vehicle for loading thereof or taking away of the load from the motor vehicle after loading therefrom. Basing on the said condition the learned Judge rejected the claim. The contention of the learned Counsel for the appellants is that the deceased is a third-party to the Insurance Company, as well as the owner of the vehicle, he is not an employee of the lorry owner, and therefore, his interest should be protected, and even if there is any violation by the owner of the vehicle or driver of the vehicle, the liability for payment of compensation to third parties cannot be rejected. To support his contention, the learned Counsel for the appellants relied upon a judgment reported in *United India Fire and General Insurance Company Limited v. Maddali Suseela*, 1979 (1) An.WR 251. In that case, it is held as follows:

"The insurance is a contract between the insured on the one hand and the insurer on the other. Any breach of the conditions of the insurance policy affect the rights of the parties to the policy. It does not have any impact upon the rights of the third party the liability towards whom was insured with insurer. Therefore even assuming that there is alleged contravention of the policy or the conditions of the permit, it does not affect the right of the third party to claim the amount granted to him under the judgment as contemplated u/s 96 of the Motor Vehicles Act."

7. On the other hand, the learned Counsel for the respondents contended that the accident has taken place because of negligence on the part of the hamalies, who were handling the bales, and it cannot be said to be a motor accident, and as such the learned Judge rightly rejected the claim.

8. I have perused the evidence on record and the order under appeal. Under Rule 93(4) of the Central Motor Vehicles Rules, 1989, the overall height of a motor vehicle measured from the surface on which the vehicle rests, (i) in the case of a vehicle other than a double-decked motor vehicle, shall not exceed 3.8 metres, which is equivalent to 12.46 feet. In the present case, admittedly, the height of the lorry is more than 14" (i.e., 4.26 mtrs.) which is in violation of the Rules, and as such, it should be held that the accident has taken place due to the negligence of the Driver.

9. In support of his contention, the learned Counsel for the appellants relied upon a judgment reported in Babu Vs. Remesan and Others, , wherein the Kerala High Court decided about the accident arising out of the "use" of motor vehicle. In that case, some workmen including the claimant were engaged in loading the goods into vehicle, and in the process of fastening the load with a rope for safe transportation, one of the workman threw the rope in order to make the end of rope, reach the other side of the vehicle, but accidentally the rope which was drenched in rain fell in live electric wires, which were passing from the place, and as a result, the claimant sustained burn injuries to his right hand, which had to be amputated. In those circumstances, the claimant filed a claim petition, and the Tribunal rejected the case of the claimant under no fault liability on the terms that the accident did not arise from the use of the motor vehicle. This finding was negated by the Kerala High Court stating that the accident arose out of use of motor vehicle and the claimant is entitled to interim award under no fault liability, and as such, the Company is liable to pay compensation to the claimant.

10. The Counsel for the appellants has rightly contended that even though the vehicle is stationed, but following the judgment of Kerala High Court reported in Babu's case (supra) and taking into consideration the expression "use of a motor vehicle" which covers accidents that occur both when the vehicle is in motion and when it is stationary, the word "use" should be given a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or an accident. Such

"use" need not necessarily be so intimate and closely direct as to make it a motor accident in the sense in which that expression is used in common parlance. The expression employed by the Legislature is "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of a motor vehicle". So, the Legislature intended to enlarge the scope of the word "use" and it should not be given a restrictive meaning. As such, the expression use of the vehicle should reasonably mean proximate to use of the motor vehicle whether or not the vehicle was in motion. Following the judgment of the Kerala High Court (supra), it should be held that the accident has occurred during the use of the motor vehicle and the driver of the vehicle negligently allowed it to be loaded to more than 14" height. So, in the above facts and circumstances I hold that the accident has occurred due to the negligence of the driver while using the motor vehicle and as such, the respondents are liable to pay the compensation.

11. As far as the contention i.e., violation of the terms and conditions of the contract is concerned, as rightly contended by the Counsel for the appellants that in view of the decision of this Court in United India Fire and General Insurance Company Limited's case (supra) even though the deceased is a third party to the accident and not an employee of the owner of the vehicle, the liability of the Insurance Company cannot be taken away, on the ground that he is a worker with the transport corporation. Therefore, Insurance Company cannot escape from its liability to pay compensation. Third parties to the company cannot be made to suffer because of the violation of the terms of the contract by one of the parties thereto.

12. In the result, the appeal is allowed, granting a total compensation of Rs.43,200/-(taking the age of the deceased as 50 years, his monthly contribution as Rs.300/- and applying the multiplier of 12) i.e., $(300 \times 12 \times 12 = \text{Rs.}43,200/-)$. The appellants are entitled to interest @ 12% p.a. from the date of filing the OP till the date of realisation and proportionate costs of the OP. Out of the above sum of Rs.43,200/-now granted, appellant No.1 is entitled to Rs.22,200/- and appellants 2 and 3 are entitled to Rs.10,500/- each. The appeal is partly allowed. However, there shall be no order as to costs in this appeal.