
(1989) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : A.A.O. No. 448, 449, 508 and 783 of 1987 and Cross Objections in
A.A.O. No's. 508 and 793 of 1987

M/s/ Economic Roadways Corporation and another

APPELLANT

Vs

K.S. Murali and others

RESPONDENT

Date of Decision : 27-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 108, 110, 2, 92, 95

Citation : AIR 1991 AP 103

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : S.V.R.S. Somayajulu and S. Hanumaiah, for the Appellant; K. Srinivasa and D. Reddeppa Reddy, for the Respondent

Judgement

K. Ramaswamy, J. 1. These four appeals are disposed of by a common judgment since they arise out of the same transaction. The accident occurred on May 14, 1984 at about 1.30 p.m. at National Highway No.9, in front of Deccan Steel, Ashoknagar, in which Ambassador car bearing No. AAT -445 in which the two injured claimants were travelling and the lorry bearing No. ATT-4674 have collided. As a result of which, the injured have sustained-extensive injuries. They laid their claims in O.Ps.795 and 796 of 1984. The Tribunal below awarded a sum of Rs.1,45,000/- to the injured in O.P. 795/84 against which, C.M.A. 793/87 has been filed by the National Insurance Company. C.M.A. 448/87 has been filed by the New India Assurance Company. A sum of Rs.26,710/-was awarded to the victim in O.P.796/84 against which C.M.A. No. 508/87 has been filed by the National Insurance Company. C.M.A. 449/87 has been filed by the New India Assurance Company. The Ambassador car was insured with the National Insurance Company and the lorry was insured with the New India Insurance Company. The cross-objections were filed by the owner of the car Thus, all the appeals are disposed of by a common judgment.

2. The contention of the owner of the Ambassador car the cross-objector is that

the accident has occurred as a result of the rash and negligent driving of the driver of the lorry and that the driver of the car is not responsible for the accident. I find no force in the contention though Sri Reddappa Reddy the learned counsel for the owner of the car has come to a different conclusion reached by the Tribunal below. I am inclined to hold that the accident occurred and the drivers of both the car and the lorry are equally responsible for the accident. It is not in dispute that the Motor Vehicles Inspector submitted his report which is marked as Ex.A3. In the report he pointed out that the right side centre of the front bumper of the lorry was dented. That would show that the Ambassador car came very rashly and dashed against the lorry. The main body of the lorry itself hit against the car causing extensive damage to the car. That would go to show that the driver of the lorry was negligent in driving it at high speed on the national highway thereby the car had sustained extensive damage. Thus, it is clear that both the drivers are equally contributed for the accident. The finding recorded by the Tribunal below that the accident has occurred due to the rash and negligent driving of both the drivers and it is well supported by the solitary evidence of P.W.1 for which strong reliance was placed by Sri Reddappa Reddy the learned counsel for the owner.

3. It is next to be seen that what is the contribution of the each of the Insurance Companies have to bear. When both the drivers are equally contributed, then both the Insurance Companies have to bear the liability proportionately, that is, 50 per cent each. This apportionment was not made by the Tribunal below resulting in filing of the appeals by both the Insurance Companies. Accordingly the appeals filed by New India Assurance Company are allowed directing that the Company is liable to pay half of the amount in both the claims. As regards the National Insurance Company is concerned, admittedly the Ambassador car is a taxi car As per the policy now placed before me the premium at the rate of Rs.12/-per passenger and for 5 passengers Rs.60/- is collected. If that be so, the liability is to be determined at Rs.15,000/- as the maximum liability, Sri Reddappa Reddy the learned counsel contended that the policy shows that the liability is Rs.50,000/- therefore it should be confined to Rs.50,000/-. I find no force in the contention. As per S. 95(2)(b)(ii) the liability is determined as per the contract of Insurance. The contract of insurance clearly shows that the premium was collected at Rs.12/- per passenger. Rs.60/- was collected for 5 passengers. Thereby the liability should be limited to Rs.15,000/-. It is not the total amount that was contracted for. In a case where the premium was paid at Rs.50/- per head then, the liability is unlimited. Accordingly, the liability of the Insurance Company as regards the claim in O.P.No.795/84 is limited to Rs.15,000/- and the balance half has to be recovered from the owner. As regards the liability in O.P.796/84 is concerned, since the total liability determined is Rs.26,710/- the half of which to Rs.13,355/-There is no ground for interference. Accordingly, the liability of the National Insurance Company is limited to Rs.13,355/- with interest thereon. As regards the liability in O.P.795/84 is concerned, the liability of the National Insurance Company is limited to

Rs.15,000/-with interest thereon. The liability of the New India Assurance Company is concerned, it is Rs.72,500/- and interest thereon. The balance amount has to be recovered from the owner.

4. The contention of Sri Reddappa Reddy the learned counsel is that the National Insurance Company has not taken this plea in the counter filed in the Tribunal below therefore the new point cannot be permitted to be raised. In the counter-affidavit filed in the Tribunal below it is stated that the liability should be as per the insurance policy and as per the provisions of the Motor Vehicles Act. Therefore, there is an express plea and it has to be referred to by the Tribunal below. Unfortunately the Tribunal below has not adverted to the fact of the policy. Sri Reddappa Reddy has also contended that under the policy, Ex.B1 the Insurance Company has not limited its liability in respect of death of or bodily injury to any person caused by or arisen out of the use of the motor vehicle. Therefore, the liability is unlimited. Thereby the National Insurance Company is liable to pay its 50 per cent contribution to the claimants. He further argued that in the policy, there is no limitation as regards Rs.15,000/-. This plea was not expressly taken in the Tribunal below. There is no opportunity to the owner to controvert this stand. The appellant-Insurance Company cannot be permitted to raise this point for the first time in these appeal. In support thereof he placed reliance on Nishat and Malwa Bus Service (P) Ltd. v. Inder Kaur, 1987 (2) ACJ 1001. The question therefore is what is the liability to which the Insurance Company could be subjected for payment of damages for the death of or bodily injury to any person caused by or arisen out of the use of the motor vehicle. It is no doubt true that in the counter filed before the Tribunal below the express averment of limiting the liability to the extent of Rs.15,000/- has not been pleaded. What has been pleaded is that the liability as per the provisions of the policy and the provisions of the Act. Therefore, let us look into what is the liability undertaken under the contract of insurance by the Insurance Company. S.2 of the insurance policy Ex. B1 reads thus;--

"(1) Subject to the limitation of the liability the insurer will indemnify the insured against all summons including claims, costs and expenses which the insured shall become legally liable to pay in respect of (i) death of or bodily injury to any person caused by or arisen out of the use (including the loading or/and unloading) of the motor vehicle;

(ii) damages to property caused by the use (including loading or/and unloading) of the motor vehicle.

The limit of liability of Rs.50,000/- is in respect of S.2, Cl. (i). Therefore the limit of Rs.50,000/- engrafted in the policy is in respect of damage to property caused by the use of the motor vehicle. We are not concerned with regard to this clause. There is no limitation prescribed as regards limit of the liability to the death of or bodily injury to any person caused by or arisen out of the use of the motor vehicle. Therefore, it is the duty to look into the provisions of the Act under which the liability has been fastened. S.95 of the Act is the appropriate provision.

Sub-sec.(1) of S.95 provides requirements of policies and limits of liability:--

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer or by co-operative society allowed under S.108 to transact the business of an insurer, or by co-operative society,.....

(2) Subject to the proviso to sub-sec.(1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:--

(a).....

(b) where the vehicle is a vehicle, in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment--

(i).....

(ii) in respect of passengers, -- a limit of fifteen thousand rupees for each individual passenger.

Thereby the limit of the liability of the insurer in respect of the passengers or passengers carried for hire or reward is limited to Rs.15,000/- to each individual passenger: Thereby the contract in Cl. (i) is to be read subject to S.95(2)(b)(ii) if so read conjointly the necessary conclusion is that if there is any accident occurred in which death of or bodily injury to any person was caused by or arising out of the use of the motor vehicle in a public place, the limit of the insurer is up to a sum of Rs.15,000/- for each of the passengers. In this case though there is no such limit prescribed in the contract of insurance but when the limit is expressly engrafted in S.95(2)(b)(ii) itself then, that will be the liability to which the Insurance Company had undertaken to indemnify under the contract of insurance. This Court has held that in the absence of limiting any liability under the contract the entire liability incurred should be indemnified by the Insurance Company. With due respect, I am unable to accept the ratio therein. It is well settled that the contract of insurance is a compulsory insurance under S.92 of the Act and the liability has been prescribed under S.95. Therefore when the Court is called upon to determine the liability undertaken by the insurer in assessing the damages and to defray the expenses thereby the Court has to look to the provisions of the Act. Considering in this perspective I am of the considered view that I cannot accede to the law laid down in the above judgment though this express plea of limiting the liability has not been specifically pleaded in the counter in view of the fact that it is a pure question of law it can be raised in the appellate Court and the appellate Court also can go into and decide the matter. Thus, I find it difficult to accept the contention raised by Sri Reddappa Reddy. It is next contended that S.95(2)(b)(ii) is constitutionally invalid. I find it difficult to give acceptance to this contention. The Tribunal has been constituted under S.110 of the Act. If that be so, the appellate Court also cannot go into the

constitutional validity of the provisions of the Act. If it is so required, it is open to the parties to agitate in appropriate proceedings as per law.

5. In the result, the appeals are allowed and the cross objections are dismissed. But, in the circumstances, each party is directed to bear their own costs.

Appeals allowed.