
(2014) 06 AP CK 0202
In the Andhra Pradesh High Court
Case No : CMA No. 784 of 2004

National Insurance Co. Ltd.	Vs	APPELLANT
Addanki Venkateswara Rao and Others		RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2015) 2 ALD 666

Hon'ble Judges : Anis, J.

Bench : Single Bench

Advocate : R.K. Suri, for the Appellant; Naram Nageswara Rao, for the Respondent

Final Decision : Disposed off

Judgement

Anis, J.?This appeal is filed by the appellant/respondent No. 3 i.e., National Insurance Co. Ltd., under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), aggrieved by the award dated 17.12.2003 passed by the District Judge-cum-Chairman, Motor Vehicle Accidents Claims Tribunal, West Godavari at Eluru, in OP No. 714 of 2001, awarding compensation of Rs. 1,00,000/-. The respondent Nos. 1 to 3/claimants filed the above O.P., under Section 166 of the Act read with Rule 455 of Andhra Pradesh Motor Vehicle Rules, claiming compensation of Rs. 1,00,000/-, on account of the death of one Addanki Srinivasa Rao, in a motor vehicle accident.

2. The brief averments made in the petition are that on 27.10.2000 at about 8:30 p.m., the deceased along with four coolies boarded the tractor and trailer bearing Nos. AEH.6273 and 6274 as batta coolie for loading and unloading of the sand in Tamilleru Reservoir and when they reached near 3rd Km., stone on Velagapalli-Yerrampalli Road, the fourth respondent herein drove the tractor in a rash and negligent manner without following the traffic rules, due to which the vehicle turned turtle and fell on the road side margin. Due to the accident, the deceased received multiple grievous injuries and was admitted in the

Government Hospital, Eluru, where he was succumbed to death due to crush injuries. The deceased was aged about 18 years and used to earn Rs. 1,800/- p.m., by working as batta coolie and maintain his parents. The first and third claimants are the parents and second claimant is the sister of the deceased. The fourth respondent herein is the driver, fifth respondent herein is the owner of the tractor bearing No. AEH.6273 and the appellant is its insurer and they all are jointly and severally liable to pay compensation to the claimants.

3. The brief averments made in the counter filed by the first respondent are as follows:

"The respondent stated that he drove the tractor very cautiously, but to save the person who was crossing the road on a cycle, he applied sudden brakes on account of which the vehicle turned turtle and fell down on the road margin and the deceased received grievous injuries and subsequently died. The respondent is having valid driving licence and is not liable to pay any compensation and prayed the Court to dismiss the petition."

4. The brief averments made in the counter filed by the second respondent are as follows:

"The respondent stated that the driver of the tractor is having valid driving licence and he drove the vehicle cautiously and the vehicle was insured with the third respondent and policy was valid at the time of the accident. Therefore, the second respondent is not liable to pay compensation to the claimants and prayed the Court to dismiss the petition."

5. The brief averments made in the counter filed by the third respondent are as follows:

"The respondent put the claimants to prove the manner of accident, age and income of the deceased and denied that the driver of the tractor drove the vehicle in rash and negligent manner, due to which the accident was caused. The respondent also put the claimants to prove that they are the sole legal heirs to claim the compensation and also stated that due to gross negligence on the part of the deceased, the accident taken place and further stated that the claim of compensation of Rs. 1,00,000/- is highly excessive, arbitrary and claimants are not entitled for any amount. It is also stated that the deceased is an unauthorised passenger in the offending vehicle and therefore, there is violation of the terms and conditions of the policy and respondent is not liable to pay any compensation and prayed the Court to dismiss the petition with costs."

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the respondent Nos. 1 to 3 got examined PWs. 1 to 3 and got marked Exs. A1 to A5 on their behalf. On behalf of the appellant herein, RW1 was examined and Ex. B1 got marked.

7. The Tribunal having considered the oral and documentary evidence on record, held that the accident took place on account of rash and negligent driving of the

tractor-cum-trailor bearing No. AEH.6273 and awarded Rs. 1,00,000/- with costs and interest at 9% p.a. as compensation to respondent Nos. 1 to 3 herein payable by the appellant and respondent Nos. 4 and 5 herein jointly and severally. Aggrieved by the Award of the Tribunal, the respondent No. 3- Insurance Company preferred the present appeal.

8. Learned Counsel for the appellant/ respondent No. 3 contended that the Tribunal ought to have seen that the insured tractor and trailer was a goods vehicle and it was not permitted to carry passengers; that the deceased and others took the said tractor and trailer to go to Eluru to see a movie as stated in Exs. A1 and A4 and therefore, it is clear that the insured-fifth respondent herein had violated the terms and conditions of the policy and that the appellant is not liable to pay any compensation to the claimants; that the Tribunal erred in taking the income of the deceased as Rs. 1,000/- p.m., in the absence of any evidence to show that he was working as a coolie; that the Tribunal erred in awarding the full claim, which is high and excessive and prayed the Court to allow the appeal.

9. On the other hand, the learned Counsel appearing for respondents argued that the deceased died in an accident while he along with four other coolies boarded the tractor and trailer bearing Nos. AEH.6273 and 6274 as batta coolie for loading and unloading of the sand in Tamilleru Reservoir; that the insurance company is liable to pay compensation to the claimants as the vehicle was insured with the appellant and the policy was in force as on the date of the accident; and that the Tribunal has rightly granted just and reasonable compensation to the claimants and prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by learned Counsel for both parties, the only point, which is to be decided in this appeal is whether the appellant/ Insurance Company has made out any grounds to set aside the award passed by the Tribunal as prayed for?

11. PW1 is the father of the deceased stated that on the date of accident, his son was working as a coolie on a tractor for carrying earth and due to rash and negligent driving of respondent No. 1, who is the driver of the tractor, the accident was caused, in which his son died. PW2 also stated that he used to work as a coolie on the tractor for loading and unloading purpose. PW3, who is the eye-witness, clearly deposed that he was going from Kamayyapalem to Chintalapudi with a load of sand when a tractor was going with high speed, the trailer was turned turtle and the deceased, who was a Mutta Maistry, received injuries and died.

12. The main contention of the appellant is that the deceased is not a coolie and he was an unauthorised passenger travelling in the trailer. There are no goods. Further they are going to watch a movie. Therefore, the Insurance Company is not liable to pay compensation and only the owner of the tractor and trailer is liable to pay compensation to the claimants.

13. To prove the appellant's case, RW1 was examined. According to him, one

passenger is permitted to board the tractor as per the terms and conditions. Further, six coolies are permitted to travel under Workmen Compensation Act and six passengers are permitted to travel for loading and unloading purpose and he has not filed any investigation report.

14. There is no dispute that as on the date of accident, the policy was in force. Respondent No. 1, who is the driver of the tractor and trailer, in his counter stated that to save a person from crossing the road on a cycle, he applied sudden brakes on account of which the trailer turned turtle and fell on the road side margin, due to which the deceased received injuries. To disprove the defence of the first respondent, the Insurance Company has not examined the owner or the driver of the tractor and trailer. The second respondent, who is the owner of the tractor and trailer in his defence, stated that policy was in force at the time of accident and driver of the tractor was having valid driving licence. Therefore, the insurance company is liable to pay compensation.

15. Even assuming without admitting that the deceased is an unauthorised passenger in the goods vehicle, still the Insurance Company has to pay and recover the amount from the owner of the tractor and trailer in view of the ratio laid down in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . The appellant has not disputed about the quantum of compensation awarded though the Tribunal granted 100% compensation as claimed by the claimants/petitioners. Admittedly, in this case, an unmarried boy aged about 18 years died in a motor vehicle accident. The Tribunal after calculating by applying the relevant multiplier, awarded compensation of Rs. 1,00,000/- as claimed by the claimants and therefore, the said award passed by the Tribunal needs no interference by this Court. Further, the appellant also has not made out any grounds to interfere with the award passed by the Tribunal. Even the driver of the tractor, who is respondent No. 4, and the owner, who is respondent No. 5, by allowing the deceased to travel on the tractor and trailer, which is a goods vehicle, committed breach of the terms of the policy.

16. Therefore, in view of the above discussion and in view of the ratio laid down in Baljit Kaur's case (supra), this Court direct the appellant-Insurance Company to first satisfy the awarded amount and recover from the owner of the vehicle by initiating a proceedings before the executing Court without filing a separate suit. With the above said observation, the appeal is disposed of. However, without costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.