
(1994) 09 AP CK 0012
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1814 of 1989

National Insurance Co. Ltd.	Vs	APPELLANT
B. Veera Swamy and Others		RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 110C(2A), 96(2)

Citation : (1995) 2 ACC 558 : (1996) ACJ 794 : (1995) 1 APLJ 412

Hon'ble Judges : M. Ranga Reddy, J

Bench : Single Bench

Advocate : S. Hanumaiah, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Judgement

M. Ranga Reddy, J.—The third respondent insurance company in O.P. No. 19 of 1986 on the file of Motor Accidents Claims Tribunal, Khammam, has filed this appeal contending that the amount of compensation awarded to the petitioners is excessive and requested for determining just and proper compensation.

2. In this case, the deceased was aged about 15 years and he was studying in 10th class. On 3.12.1985 while he was proceeding on a cycle, he was knocked down by a tractor-trailer and as a result of the injuries sustained in the said accident, he died in the hospital on the same day while undergoing treatment. The parents of the deceased filed a petition claiming compensation of Rs. 1,00,000/-. The respondent No. 1 was the driver, respondent No. 2 was the owner of the tractor-trailer and the respondent No. 3 is the insurance company who is the appellant herein.

3. The Tribunal, after enquiry, found the driver of the vehicle guilty of rash and negligent driving and consequently awarded compensation of Rs. 80,000/-. Respondent Nos. 1 and 2, i.e., driver and owner had remained ex pane. Aggrieved by the quantum of compensation, the insurance company has filed this appeal.

4. A preliminary objection was raised by the counsel for the respondents-claimants stating that it is not open to the insurance company to question the quantum of compensation in view of the provisions of Section 96(2) of the Motor Vehicles Act. In support of this contention he relied on decisions of this court in United India Insurance Co. Ltd. and Others Vs. Shaik Saibaqtualla and Others, and Raddipalli Chinnarao v. Reddi Lorurdu 1980 ACJ 470 (AP), wherein it was held . that in view of the provisions of Section 96(2) of the Motor Vehicles Act it is not open to the insurance company to question the quantum of compensation.

Section 110-C(2-A) reads as follows:

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim shall be impleaded as a party to the proceedings and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

From the above section, it is clear that if a person against whom claim is made has failed to contest the claim and if the insurer is not a party, the court may for reasons to be recorded in writing direct that insurer, who may be made liable in respect of such a claim, shall be impleaded as a party. The insurer so impleaded thereupon gets the right to contest the claim on all grounds available to the person against whom the claim is made. In case where the insurer is already a party there is no question of the court recording any reasons in writing and directing the insurer to be made party. Here in this case, the insurer is already a party and it is also evident that the owner had not chosen to contest the " matter and has remained ex pane. Therefore, by virtue of the provisions u/s 110-C(2-A) wherein the insurer is a party and where the person against whom the claim is made does not contest the claim, the insurer gets the right to contest his claim on all grounds available to the person against whom the claim is made. So, under the circumstances, it cannot be said that the insurance company cannot question the quantum of compensation. I, therefore, negative the preliminary objection raised by the respondent and find that the insurance company is competent to question the same under the circumstances of the case.

5. The next question that falls for consideration is whether the amount of Rs. 80,000/- awarded as compensation for the death of a boy aged 15 years and studying in 10th class is exorbitant and if so, what would be reasonable amount of compensation.

6. The Tribunal while awarding compensation of Rs. 80,000- had observed that he was a bright boy getting good marks in the examinations and as such he

would have maintained his parents on his completion of studies. But the Tribunal, it appears, has lost sight of the fact that after attaining majority in all probability, he would have got married and the loss of dependency of the parents cannot be estimated on the earnings of the deceased. So, it is uncertain as to whether the deceased would have been able to secure any job and maintain his parents. So, we have to assess the compensation on the basis of some guesswork and see that some reasonable amount is awarded. Even under no fault liability, the legal heirs of the deceased would have been entitled to an amount of Rs. 15,000/- in case the accident took place prior to amendment and Rs. 25,000/- subsequent to amendment. Having regard to number of decided cases in respect of the death of the boys of that age group, I find that a sum of Rs. 50,000/- would be reasonable.

7. In the result, a compensation of Rs. 50,000/- is awarded to the petitioners with interest at 12 per cent per annum from the date of petition till realisation. The petitioners shall be entitled to equal share in the said compensation. No costs.