

(2007) 10 AP CK 0059

In the Andhra Pradesh High Court

Case No : CMA No's. 514 of 2005 and CRP No's. 1504 and 1506 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

M. China Samba and Others

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A, 337, 338

Citation : (2008) 2 ALD 455 : (2008) 3 ALT 558

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : T. Ramulu, for the Appellant; T.S. Rayalu, for Respondent Nos. 1 to 3 in CMA No. 514 of 2005, for the Respondent

Judgement

T. Ch. Surya Rao, J.—Inasmuch as all the claims arise out of a common accident and as common questions of law and fact are involved, these appeals can be disposed of together.

2. The unsuccessful insurer-second respondent is the appellant which seeks to assail the award dated 4.9.2004 passed by the learned Motor Accidents Claims Tribunal, Guntur, in M.V.O.P. Nos. 392, 393, 394, 395, 396, 397, 400, 402, 421, 398 and 401 of 2000. The respondents are the claimants who laid individual claims. One by the legal representatives of the deceased, who died in the accident and the other by the injured claimants. The deceased and the other injured claimants came in the lorry bearing No. AHW-239 owned by one K. Nagi Reddy and insured with the appellant on 10.3.2000 as coolies, for loading and unloading purposes, from Narakikallu to Piduguralla. After unloading, on its way back, when the vehicle reached Pedanemalipur Bridge, on account of the rash and negligent driving by its driver, the lorry turned turtle, as a result of which, all the coolies who were in the body of the lorry fell down. The deceased who received fatal injuries succumbed to them in the hospital at Guntur and the other claimants sustained injuries. A case in Crime No. 16/ 2000 under Sections 304A, 338 and 337 of the Indian Penal Code was registered against the driver of the

offending vehicle. On account of the death of the deceased, the claimants, his widow, son and widowed sister suffered mentally and financially. On account of the injuries sustained, the other claimants also suffered damages.

3. The claims were resisted by the owner of the offending vehicle denying the material averments made in the application and the liability of the owner to pay compensation while asserting that the offending vehicle was validly insured with the appellant-insurer and the driver, who was driving the vehicle, was having valid driving licence at the relevant time.

4. The appellant-insurer resisted the claim on the premise that the vehicle was insured with the appellant to cover the risk of third parties and for the damage of third party property and also the risk of paid driver, cleaner and six coolies who come under the provisions of Workmen's Compensation Act, but, at the time of accident there were 15 coolies travelled in the offending vehicle and therefore the insurer was liable to pay compensation in respect of six coolies as per the terms of the policy and the compensation claimed by the individual claimants was excessive and highly speculative.

5. The Tribunal, at the culmination of the enquiry, appreciating the evidence adduced on either side, reached the conclusion that the accident was due to the rash and negligent driving of the driver of the offending vehicle. On re-appraisal of the evidence adduced on the point, it is obvious that the finding of the learned Tribunal is quite impeccable. Even otherwise, from the fact which speaks for itself that the lorry turned turtle, it is obvious that the accident must have been the result of the rash and negligent driving of its driver, since it is nobody's case that there had been any mechanical failure or uneven conditions of the road or some such legitimate reason which could have contributed to the accident. The driver was not examined in this case as a witness by the owner. Therefore, there is nothing to interfere with the finding of the learned Tribunal.

6. The factum of accident has clearly been established in the instant case. The claimants and the deceased were obviously travelling in the vehicle, which is a goods vehicle, as coolies for loading and unloading purposes of the bricks. The insurance policy covers clearly the risk of six coolies in addition to the paid driver and cleaner of the vehicle, third party risk and damage to third party property, admittedly. It is, therefore, clearly a case where the accident was due to the rash and negligent driving of the driver of the offending vehicle which was validly insured with the appellant covering the risk of the paid driver and cleaner and six coolies. However, there have been as many as 11 claims - ten of them laid by the injured claimants and the 11th claim was laid by the legal representatives of the deceased. All of them along with four others were travelling in the offending vehicle as coolies for loading and unloading purposes. Obviously, the liability of the insurer is restricted to six coolies in view of the policy covering their risk. The insurer, therefore, cannot be compelled to pay compensation to the claimants in addition to the six persons whose risk was covered under the policy.

7. In the instant case, the Tribunal proceeded to dispose of the claims separately assessing the damages and awarding the compensation in the individual cases as per its own merits. The methodology adopted by the Tribunal in assessing the compensation is not in dispute. The quantum eventually assessed by the Tribunal in each case is also not in serious dispute.

8. The only question that falls for determination in these appeals is about the liability of the appellant to pay compensation to those claimants who are more than six claimants whose risk is obviously not covered under the policy.

9. The question was baffling the minds of the Courts. For sometime, there has been a clear cut cleavage in view of divergent views expressed by various Courts on this aspect. The controversy now is set at rest by the judgment of the Apex Court in *National Insurance Co. Ltd. Vs. Anjana Shyam and Others*, . That was a case where 70 passengers were travelling in the vehicle. However, the vehicle was insured for 38 passengers, in addition to the driver and conductor. The plea of the insurer was that its liability was limited to the claim of 38 passengers. Under the circumstances, the Apex Court was of the view thus:

As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.

10. From the above dictum it is obvious that a methodology has been conveniently evolved by the Apex Court so as to render justice to all the claimants whose number is obviously more than the number whose risk is covered under the policy of insurance. The question involved in the instant case is identical.

11. The liability of the insurer is obviously in accordance with the terms of the policy. However, the liability of the owner of the offending vehicle for the tortious Act committed by his driver, who was driving the vehicle at the relevant time, cannot be restricted to the number whose risk is covered under the policy. Therefore, in all cases where in a given accident the claimants are more than the number, which is covered under the policy, the Tribunal shall have to assess the compensation in individual cases separately and arrive at the quantum to be paid in each case. The highest among the award shall be taken into consideration and from that in the descending order the claims of persons to the extent it is covered by the policy shall be reckoned and added and the lump sum amount to be paid shall be arrived at. That lump sum amount shall have to be distributed amongst all the claimants prorata depending upon the compensation awarded in each case by the Tribunal. The amount that is fallen short than the actual amount awarded by the Tribunal shall be paid by the owner of the offending vehicle separately. The Tribunal should pass appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that are passed in individual cases. In that view, justice can be done to all the claimants who are the victims of an unforeseen accident and who suffered the consequences thereof.

12. In the instant claims, C.M.A. No. 514 of 2005 arises out of the award in O.P. No. 392 of 2000, filed by the legal representatives of the deceased who died in the accident. The Tribunal awarded a compensation of Rs. 1,28,000/-, in all, to them. In two other cases the Tribunal awarded compensation at the rate of Rs. 20,000/- each for the injuries sustained by the claimants in C.M.A. Nos. 424 and 432 of 2005 arising out of M.V.O.P. Nos. 393 and 394 of 2000. In another case the Tribunal awarded compensation of Rs. 18,000/- for the injuries sustained by the claimant in C.M.A. No. 419 of 2005 arising out of M.V.O.P. No. 396 of 2000. In another case the injured claimant in C.M.A. No. 414 of 2005 was awarded a compensation of Rs. 16,000/- arising out of M.V.O.P. No. 395 of 2000. In another case the claimant was awarded compensation of Rs. 12,000/- in C.M.A. No. 431 of 2005 arising out of M.V.O.P. No. 397 of 2000. Of course, in three more cases, C.M.A. Nos. 430, 425 and 433 of 2005 arising out of M.V.O.P. Nos. 400, 402 and 421 of 2000 the compensation was granted at the rate of Rs. 12,000/- each. Since admittedly the risk of six passengers was covered under the policy, the liability of the insurer can be limited to six claims. Taking the highest compensation granted in all the cases into consideration in the descending order six claims shall have to be considered and added so as to arrive at the lump sum. They being Rs. 1,28,000/-; Rs. 20,000/-; Rs. 20,000/-; Rs. 18,000/-; Rs.

16,000/- and Rs. 12,000/-. If all the six claims are added, the lump sum amount would be Rs. 2,14,000/-. But, there are 11 claims in this case. The total compensation awarded by the Tribunal in all the 11 cases comes to Rs. 2,64,000/-. As against the total compensation awarded by the Tribunal in a lump sum amount of Rs. 2,64,000/-, the liability of the insurer is limited to Rs. 2,14,000/-. The deficiency, therefore, shall have to be worked out prorata and shall be deducted from out of the quantum awarded in each case and then paid. The deficit amount of Rs. 50,000/- shall be divided by the total lump sum amount of Rs. 2,64,000/- and then multiplied by the quantum awarded in each case which would result in the pro-rata deficit in that case. After deducting that amount the balance shall have to be arrived at, which amount constitutes the liability of the insurer to be paid in all the claims. Since the liability of the insurer is limited to six claims whose total comes to Rs. 2,14,000/-, as discussed hereinabove, there is balance of Rs. 50,000/- to be paid by the owner of the offending vehicle. The Tribunal in the instant case should take appropriate measures for realizing the balance amount of Rs. 50,000/- from the owner of the offending vehicle so as to distribute the same amongst all the claimants so as to make up the deficiency. This shall be the methodology that shall be adopted by the Tribunals in all cases where the claimants are more than the claims covered by the policy.

13. Inasmuch as the liability of the insurer is limited to the cases covered by the policy. $\text{Rs. } 50,000/- / \text{Rs. } 2,64,000 \times \text{Rs. } 1,28,000/-$ would result in the deficit of Rs. 24,242/-. After deducting that amount the claim of the appellant insurer can be limited to Rs. 1,03,758/-. Similarly, $\text{Rs. } 50,000/- / \text{Rs. } 2,64,000/- \times \text{Rs. } 20,000/-$ would result in the deficit of Rs. 3,787/- and the liability of the insurer can be limited to Rs. 16,213/-. Similarly, $\text{Rs. } 50,000/- / \text{Rs. } 2,64,000/- \times \text{Rs. } 18,000/-$ would result in deficit of Rs. 3,409/- and the liability of the insurer can be limited to Rs. 14,591/-. Similarly, $\text{Rs. } 50,000/- / \text{Rs. } 2,64,000/- \times \text{Rs. } 16,000/-$ would result in the deficit of Rs. 3,030/- and the liability of the insurer can be limited to Rs. 12,970/-. Similarly, $\text{Rs. } 50,000/- / \text{Rs. } 2,64,000/- \times \text{Rs. } 12,000/-$ would result in deficit of Rs. 2,272/- and the liability of the insurer can be limited to Rs. 9,728/-. The other compensation can be worked out in the same fashion. These amounts shall be paid by the appellant-insurer with interest at the rate of 8% per annum from the date of application till realization. The deficit amounts arrived at hereinabove shall be paid by the owner of the offending vehicle.

14. Insofar as the first claim is concerned, the compensation shall have to be apportioned, which is Rs. 1,03,758/-. The major chunk of it shall go to the widow followed up by the son who obviously attained majority during the pendency of the proceedings. The third claimant being the widowed sister, shall be relegated to the third position. She shall be awarded a compensation of Rs. 10,000/- and the balance shall be distributed amongst the claimants 1 and 2 equally i.e., Rs. 46,879/- each.

The appeals and revision petitions are disposed of accordingly. But, under the

circumstances, without costs.