
(2010) 06 AP CK 0022

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2875 of 1998

National Insurance Co. Ltd.

APPELLANT

Vs

M. Venkateswaramma and Others

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 167, 175

Citation : (2011) 1 ALD 574

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : T. Mahnder Rao, SC, for the Appellant; D. Gopala Krishna, for the Respondent

Judgement

R. Kantha Rao, J.—This is an appeal filed by the Insurance Company against the Judgment, dated 29.07.1998 passed by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nellore in O.P. No. 532 of 1992.

2. The National Insurance Company Limited, Ongole, which was the third Respondent before the Tribunal below is the Appellant herein. The Respondents claiming to be the legal representatives of the deceased Veera Prakash, who died in a motor vehicle accident occurred on 14.03.1992 filed a claim petition before the Tribunal below seeking compensation of Rs. 1,75,000/-. The learned Tribunal after making an enquiry into the claim petition, partly allowed it, granting compensation of Rs. 1,07,000/- with interest at the rate of 10% per annum from the date of petition till the date of realization, which award is impugned in this appeal.

3. The Appellant-insurance company challenges the award on the ground that earlier there was an order passed by the Commissioner for Workmen's Compensation, Eluru in W.C. No. 172 of 1992 awarding compensation of Rs. 74,066/- holding the Respondents 4 and 5 to pay compensation and directing the 5th Respondent-insurance company to deposit the amount in favour of the applicants therein, who claimed to be the legal representatives i.e. wife and

children of the deceased and the Commissioner therein ruled that the applicants before him are the legal representatives of the deceased and finally awarded compensation in their favour by his order dated 29.05.1995 in W.C. No. 172 of 1992. The Appellant's contention seems to be that as per Section 167 of the Motor Vehicles Act, the legal representatives of the deceased are entitled to claim compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act, but not under both and therefore, the claim petition filed before the Motor Accidents Claims Tribunal cum II Additional District Judge, Nellore is not maintainable. Thus according to the Appellant, the Tribunal ought to have dismissed O.P. No. 532 of 1992 filed before it under the Motor Vehicles Act.

4. I have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents.

5. The deceased aged 35 years, was a lorry driver and he was driving the lorry bearing No. A.P.16T 3681 at the time of accident. In the claim petition filed before the Motor Accidents Claims Tribunal, Nellore, the claimants contended that while the deceased was driving the lorry slowly and cautiously towards Madras on the GNT Road, the lorry bearing No. AP 27 T 2599 driven in a rash and negligent manner by the first Respondent coming in the opposite direction, dashed the lorry which the deceased was driving. Thus, according to the claimants, the first Respondent alone was responsible for causing the accident. The learned Tribunal rejected the contention urged by the third Respondent which was to the effect that the accident was caused due to composite negligence on the part of the driver of both the vehicles and held accepting the submission made by the claimants that the accident occurred due to rash and negligent driving of the lorry bearing No. AP 27 T 2599 by the first Respondent and accordingly fastened the liability on the Respondents 1 to 3, driver, the insured, insurer respectively of the said vehicle and awarded compensation of Rs. 1,07,000/-. However, the fact remains that earlier one (1) Mareedu Rani, (2) Mareedu Veera malleswara Rao, (3) Mareedu Veera Malleswari and (4) Mareedu Veera Prakasamma claiming to be the wife and minor children respectively of the deceased filed W.C. No. 172 of 1992 against the Respondents 4 and 5 before the Commissioner for Workmen's Compensation, Eluru and the learned Commissioner by his order dated 29.05.1995 allowed the claim and granted compensation and the 5th Respondent - insurance company in consequence thereof deposited the said amount before the Commissioner on 08.02.1996.

6. It is significant to note that the applicants before the Commissioner for Workmen's Compensation, Eluru in W.C. No. 172 of 1992 are different to the claimants in O.P. No. 532 of 1992 on the file of the Motor Vehicles Accidents Claims Tribunal cum II Additional District Judge, Nellore.

7. It is true that Section 167 of the Motor Vehicles Act enables the legal representatives of the deceased to claim compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act, 1988, but not under both. The principle embodied in the said provision that the legal

representatives are precluded from claiming compensation under both the enactments applies only when the claimants are one and the same in both the cases. Here the claimants are different in both the cases. Though the Commissioner for Workmen's Compensation, awarded compensation to the applicants therein holding them as the legal representatives of the deceased the claimants in the later case i.e. in O.P. No. 532 of 1992 before the Motor Accidents Claims Tribunal cum II Additional District Judge, Nellore not being parties to the said proceedings, there was no opportunity for them to oppose the claim made by the applicants therein. The adjudication in both the cases is in respect of different sets of legal representatives, who claimed themselves to be the legal representatives of the deceased. There was no occasion for the Commissioner for Workmen's Compensation to adjudicate upon the issue as to who are in fact, the legal representatives of the deceased while holding enquiry in W.C. No. 172 of 1992.

8. In O.P. No. 532 of 1992 the learned Motor Accidents Claims Tribunal, Nellore expressed the view that either the Motor Accidents Claims Tribunal or the Commissioner for Workmen's Compensation being Tribunals cannot decide the issue as to who are the legal representatives of the deceased on the supposition that essentially the said issue has to be adjudicated by competent civil court. The view expressed by the learned Motor Accidents Claims Tribunal is not correct on account of the bar on jurisdiction of civil court envisaged u/s 175 of the Motor Vehicles Act, which is as follows:

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

Therefore, under the scheme of the Motor Vehicles Act in determining the compensation in relation to the injuries sustained by the victims to the accident or that of the legal representatives of the deceased, who died in the motor vehicle accident the Tribunal constituted under the Motor Vehicles Act alone is competent to decide any issue concerning the adjudication of claim for compensation and such issue includes the questions as to who are in fact, the legal representatives of the deceased, died in the motor vehicle accident. The object under lying Section 175 of the Motor Vehicles Act is to empower the Tribunals constituted under the Act to completely and conclusively adjudicate upon the issues relating to the claim of compensation arising under the Motor Vehicles Act. If at all the claimants are directed to pursue certain issues before the civil court it will certainly defeat the object of the Act, which was enacted to provide reasonable compensation to the claimants without subjecting them to pursue to the long drawn procedure and complex litigation. Therefore, in this case, I hold, unhesitatingly that the Motor Accidents Claims Tribunal, Nellore has

jurisdiction to decide the question as to in fact, who are the legal representatives of the deceased entitled to claim compensation under the Motor Vehicles Act, 1988. However, the learned Tribunal could not have decided the said question since all the parties were not before it. Unless the applicants in W.C. No. 172 of 1992 are before the Tribunal as contesting parties, it cannot adjudicate upon the said issue. The applicants in W.C. No. 172 of 1992 have to be essentially brought on record as Respondents in O.P. No. 532 of 1992 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge, Nellore) for effective and complete adjudication of the right to claim compensation. I am not prepared to find favour with the submission of the Appellant insurance company that the P.P. No. 532 of 1992 is not maintainable owing to the prohibition u/s 167 of the Motor Vehicles Act. The reason as already indicated, the claimants in O.P. No. 532 of 1992 are not parties before the Commissioner in W.P. No. 172 of 1992. I may also point out that the Appellant insurance company was under a duty to ascertain the legal representatives of the deceased, but failed in it's, responsibility by contesting the case in a casual manner before the Commissioner for Workmen's Compensation, Eluru.

9. Under the circumstances stated herein above, the order passed by the learned Motor Accidents Claims Tribunal (II Additional District Judge), Nellore is set aside and the matter is remitted back to the Tribunal with a direction to get the applicants in W.C. No. 172 of 1992 impleaded as Respondents in O.P. No. 532 of 1992 either directing the claimants therein to bring them on record or by doing the said exercise on its own and to decide all the issues afresh and pass an award as expeditiously as practicable preferably within a period of six months. It is needless to mention that the award passed by the Commissioner for Workmen's Compensation, Eluru, without the presence of the claimants in O.P. No. 532 of 1992 is non-est in the eye of law.

10. The appeal is accordingly disposed of in terms of the above direction. There shall be no order as to costs.