
(2013) 01 AP CK 0012
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3223 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Malhota Laxmi and Others		RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 167
Penal Code, 1860 (IPC) — Section 166, 304A, 338
Workmens Compensation Act, 1923 — Section 10

Citation : (2013) 4 ACC 502 : (2013) 4 ACC 207 : (2014) ACJ 1209 : (2013) 4 ALD 134 : (2013) 4 ALT 591 : (2013) 138 FLR 1030

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : M. Bhaskara Lakshmi, for the Appellant; V. Rvinder Rao, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This appeal is at the instance of the National Insurance Company Limited/third respondent before the Tribunal against the order dated 30.01.1999 passed by the Motor Accident Claims Tribunal-cum-District Judge, Adilabad in O.P. No. 417 of 1996. I have heard Mrs. M. Bhaskara Lakshmi, learned counsel appearing for the insurance company and Sri V. Ravinder Rao, learned counsel appearing for the respondents/claimants.

2. The respondents/claimants filed a claim case u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 7 lakhs on account of the death of the deceased M. Ramulu, who was working as driver in the Cement Corporation of India Limited which was the 4th respondent before the Tribunal in a motor vehicle accident occurred on 20.08.1996 in the course of the employment with the Cement Corporation of India Limited. The deceased was driving lorry bearing No. AP 1 T 297 with a load of cement, he was proceeding from CCI Township, Adilabad to Nirmal, when the lorry reached Devapur Cross Roads on N.H. No. 7, suddenly a

lorry bearing No. AP 9 T 1515 came in the opposite direction at high speed and dashed the lorry of the deceased. In the said accident, the deceased received severe injuries and died in consequence of the said injuries. The deceased working as a driver in CCI was said to be aged 40 years and was getting salary of Rs. 4,888.80 ps. which was evidenced by Ex. A. 8, salary certificate produced by the claimants.

3. The learned Tribunal below basing on the evidence of PW. 2, an eyewitness, considering the documents viz. Ex. A.1, copy of the FIR in Cr. No. 64 of 1996, Ex. A2 copy of the inquest report, Ex. A.10, certified copy of charge sheet in C.C. No. 431 of 1996 and also Ex. A.9, copy of the order in C.C. No. 431 of 1996 passed by the Judicial First Class Magistrate, Adilabad which shows that the driver of the offending vehicle was convicted for the offence under Sections 338 and 304-A of IPC decided that the accident was solely on account of the rash and negligent driving of the driver of the lorry bearing No. AP 9 T 1515 and held that its owner/second respondent before the Tribunal and the appellant/National Insurance Company Limited which was the first respondent are jointly and severally liable to pay the compensation to the claimants.

4. PW. 2 is no other than the cleaner on the lorry of CCI, who was travelling along with the deceased at material time. He also received injuries in the accident. The respondents did not adduce any evidence. Therefore, there is voluminous evidence before the learned Tribunal below showing that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 9 T 1515 and the said finding cannot be interfered with in the present appeal.

5. For the purpose of computing compensation, the learned Tribunal below took the salary of the deceased at Rs. 4,000/- per month, considered his age to be 40 years, basing on Exs. A.3, certified copy of post-mortem report, made 1/3rd deduction towards personal and living expenditure of the deceased, applied multiplier 15 and awarded compensation of Rs. 4,80,000/- together with interest @ 12% per annum from the date of petition till the date of realization.

6. If the compensation is computed basing on the principles laid down in SARALA VERMA AND OTHERS v. DELHI TRANSPORT CORPORATION AND ANOTHER 1 it works out to more amount and therefore, I see no substance in the contention advanced by the counsel for the insurance company that the compensation is on higher side. However, since there is no appeal by the claimants seeking enhancement of compensation, I am not inclined to go into the question whether the compensation granted by the Tribunal is inadequate and the claimants are entitled for more compensation.

7. However, the main contention urged by Smt. M. Bhaskara Lakshmi, learned counsel appearing for the insurance company is that earlier to filing of the claim case u/s 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Adilabad in O.P. No. 417 of 1996, the claimants preferred a claim before the Commissioner for Workmen's Compensation and Deputy Commissioner of

Labour, Warangal and the learned Commissioner by his order in the said case granted compensation of Rs. 1,75,540/-, the claimants by suppressing the said fact filed the claim case before the Motor Accident Claims Tribunal, Adilabad and therefore, the order passed by the learned Tribunal cannot be sustained and is liable to be set aside.

8. On the other hand, Sri V. Ravinder Rao, learned counsel appearing for the respondents/claimants would submit that the claimants did not prefer any claim, the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal in exercise of his powers under the proviso to Sub-section 1 of Section 10 of the Workmen's Compensation Act, 1923 determined the compensation and deposited the amount which the claimants refused to receive by filing a petition before the Commissioner for Workmen's Compensation and thus, the award passed by the Motor Accident Claims Tribunal, Adilabad can be sustained in law.

9. Section 167 of the Motor Vehicles Act enables the claimants to make a claim for compensation either under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923, but enacts a bar to the effect that the claimants cannot prefer claims under both the Acts. Therefore, there is an option to the claimants to choose their remedy under either of the statutes, but when once they opted for compensation under one of the statutes by making an application, they are precluded from making another claim under the other enactment on the ground that the compensation granted to them in their earlier claim is not adequate.

10. Therefore, the question to be considered in this appeal is whether the claimants preferred any claim before the Commissioner for Workmen's Compensation, Warangal before preferring a claim under the Motor Vehicles Act before the Motor Accident Claims Tribunal, Adilabad. In this context, it is necessary to peruse the order, dated 13.01.1998 passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal in R.C. No. D3/3444/96. The order was passed on a petition submitted before the learned Commissioner by Smt. Malhota Laxmi, widow of the deceased. In the said petition as could be seen from the order, the widow of the deceased stated that the legal representatives of the deceased filed O.P. No. 417 of 1996 before the Motor Accident Claims Tribunal, Adilabad claiming compensation of Rs. 7 lakhs, they are not willing to receive the amount deposited pursuant to the order passed by the Commissioner, by the insurance company/employer. The order passed by the learned Commissioner discloses that the Commissioner on receiving the information about the accident in which the deceased who was the workman in CCI died, determined the compensation in exercise of powers under the proviso to Sub-section 1 of Section 10 of the Workmen's Compensation Act, by calculating the compensation amount as per the provisions of the Workmen's Compensation Act, sent notice to the Cement Corporation of India/employer and his insurer that is the National Insurance Company to deposit the amount of

compensation, and in compliance thereof, the National Insurance Company deposited an amount of Rs. 1,75,540/- as compensation. Therefore, the order passed by the learned Commissioner does not show that any claim was preferred by the widow of the deceased or by the other claimants. The order only shows that the widow of the deceased and the other claimants filed a petition to close the file as they preferred claim before the Motor Accident Claims Tribunal, Adilabad. In the order, the learned Commissioner specifically mentioned that in view of the petition submitted by the claimants, the dependents enquiry is not conducted and the deposited amount of Rs. 1,75,540/- was returned to the insurer/National Insurance Company Limited, Warangal, the appellant herein and further proceedings were closed. From the order of the learned Commissioner, therefore, it is obvious that the claimants did not make any claim before him and the compensation was determined by him in exercise of powers under Sub-section 1 of Section 10 of the Workmen's Compensation Act.

11. The learned Motor Accident Claims Tribunal, Adilabad did not properly peruse the order passed by the learned Commissioner under Ex. A.11 and the learned Tribunal stated in its order that PW. 1 claimed Rs. 7 lakhs compensation before the learned Commissioner for Workmen's Compensation, Warangal. The learned Commissioner for Workmen's Compensation, Warangal was referring in Ex. A.11 - order to the claim made by the claimants before the Motor Accident Claims Tribunal, Adilabad, but, did not mention in Ex. A.11- order that the claimants preferred a claim before him for an amount of Rs. 7 lakhs under Workmen's Compensation Act. Thinking that the claimants earlier preferred a claim before the learned Commissioner for Workmen's Compensation for an amount of Rs. 7 lakhs, the learned Motor Accident Claims Tribunal, Adilabad after granting total compensation of Rs. 4,80,000/- directed the respondents 2 and 3 before it to deduct the amount of Rs. 1,75,540/- awarded to the petitioners by the Commissioner under Workmen's Compensation Act. The learned Motor Accident Claims Tribunal, Adilabad in fact ought not to have directed the respondents 2 and 3 before it to deduct the amount which was granted by the Commissioner for Workmen's Compensation, Warangal. However, since there is no challenge by the claimants to the award passed by the learned Motor Accident Claims Tribunal, Adilabad, I am not inclined to set aside the said finding recorded by the Motor Accident Claims Tribunal, Adilabad. In any event, since the order passed by the Commissioner for Workmen's Compensation, Warangal was in exercise of his powers under Sub-section 1 of Section 10 of the Act and not on the application made by the claimants, I see no substance in the contention advanced on behalf of the appellant/insurance company that the award passed by the Motor Accident Claims Tribunal, Adilabad is unsustainable in law and is liable to be set aside. The appeal filed by the appellant/insurance company therefore, fails and the same is dismissed. There shall be no order as to costs.