
(2007) 07 AP CK 0063
In the Andhra Pradesh High Court
Case No : CMA No. 4664 of 2003

National Insurance Co. Ltd.	Vs	APPELLANT
Pemmadi Lakshmi and Others		RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 168, 2(21), 2(27), 2(47)

Citation : (2008) 1 ALD 192

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : M. Bhaskara Lakshmi, for the Appellant; N. Siva Reddy, for the Respondent

Final Decision : Allowed

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 5.9.2003 in M.V.O.P. No. 309 of 2000, on the file of the Motor Accidents Claim Tribunal (Ill-Additional District Judge) (for short "the Tribunal"), Kakinada, wherein the claim of respondents 1 and 2 herein was allowed-in-part awarding compensation of Rs. 1,21,600/- with interest at 9% per annum from the date of petition.

2. Respondents 1 and 2 herein filed claim application before the Tribunal claiming a total compensation of Rs. 2,50,000/- on account of the death of the deceased Satyam, who died in a motor vehicle accident that occurred on 5.5.2000. The first claimant is the wife and the second claimant is the daughter of the deceased. According to them, on that day when the deceased was proceeding to Uppalanka Village from Peda Chollangi on a bicycle, a Hero Honda motorcycle bearing No. AP 5 N 1279, driven in a rash and negligent manner by its rider, dashed against the bicycle of the deceased, resulting in multiple injuries to which the deceased succumbed while undergoing treatment in Government General Hospital, Kakinada. A case in Cr. No.41 of 2000 was registered by the police against the first respondent, the rider of the motorcycle. It is further pleaded that the deceased was aged 45 years and was earning Rs. 3,000/-per month as

fisherman.

3. The first respondent-rider of the motorcycle filed a counter before the Tribunal opposing the claim and contending that the deceased, who was going on a bicycle in a drunken condition, dashed against the motorcycle and was thereby responsible for the accident. The second respondent-owner of the motorcycle remained ex parte and the third respondent-insurer filed a counter before the Tribunal opposing the claim and denying their liability to pay the compensation.

4. On the strength of the above pleadings, the Tribunal framed the following issues for trial:

(i) Whether the accident had occurred due to rash and negligent driving by driver of Hero Honda Motorcycle AP 5 N 1279?

(ii) Whether the petitioners are entitled to the compensation and if so to what amount and from which of the respondents?

(iii) To what relief?

5. P.Ws. 1 and 2 were examined and Exs. A-1 and A-2 were marked on behalf of the claimants. R.Ws.1 to 3 were examined and Exs. B-1 to B-4 were marked on behalf of the appellant-insurance company. Ex. X-1 was also marked.

6. On a consideration of the evidence on record, the Tribunal gave finding on issue No. 1 that the accident occurred due to the rash and negligent driving of the motorcycle by the first respondent and that the deceased contributed to the accident, and apportioned the liability in the ratio of 80:20 respectively. On issue No. 2, the Tribunal held that the claimants are entitled for a total compensation of Rs. 1,21,600/-. Accordingly, an award was passed for the said amount with interest at 9% per annum from the date of petition.

Aggrieved by the said award, the appellant-insurer filed the present appeal.

7. Arguments of the learned Counsel ""for the appellant and the respondents are heard. Records are perused.

8. The learned Counsel for the appellant contended that the apportionment of liability on the first respondent to the extent of 80% is on the higher side. She further contended that the Tribunal erred in applying the multiplier "11" instead of 7.68" which is suitable to the age of the deceased. She further contended that there was no valid driving licence for the first respondent and the Tribunal having observed to pay the compensation initially and recover from the owner, however, failed to mention the same in the decree.

9. On the other hand, the learned Counsel for the respondents 1 and 2 sought to justify the award.

10. The point which arises for consideration in this appeal is whether the award dated 5.9.2003 passed by the Tribunal in M.V.O.P. No. 309 of 2000 granting compensation of Rs. 1,21,600/- is liable to be interfered with.

11. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the motorcycle by its rider, the first respondent, and that the deceased also contributed to the accident because of his intoxicated condition, in which he was riding the bicycle, is not seriously disputed.

12. The only dispute is regarding the apportionment of the liability for the accident. The Tribunal on proper appreciation of evidence on record held that the first respondent has to bear the major responsibility for the accident and held him liable to the extent of 80%. Considering the fact that the first respondent was riding the motorcycle which is certainly a heavier vehicle than the bicycle, on which the deceased was going and also the fact that the first respondent had enough time and opportunity to see the deceased going on a bicycle, it is only reasonable to expect that the first respondent should have easily avoided the accident had he exercised due care and caution. The first respondent having failed to exercise the care and caution expected of him has to certainly bear the major brunt of the responsibility. It cannot, therefore, be said that fixing of his liability to the accident to the extent of 80% by the Tribunal is on the higher side.

13. The quantum of compensation assessed by the Tribunal in a sum of Rs. 1,21,600/- cannot be considered to be excessive or unreasonable, having regard to the fact that the deceased was aged only 45 years. According to the claimants, the deceased was earning Rs. 3,000/- per month by doing fish business. In the absence of any evidence in proof of the claimed income, the Tribunal has reasonably estimated his income at Rs. 1,500/- per month and after deducting 1/3rd thereof towards his personal expenses, estimated the contribution to the family at Rs. 1,000/- per month which comes to Rs. 12,000/- per annum. The Tribunal estimated the loss of dependency in a sum of Rs. 1,32,000/-, applying the multiplier "11" by taking the age of deceased as 50 years and as borne out by the post-mortem certificate-Ex. A-2, which is appropriate as per the II Schedule of the Motor Vehicles Act (for short "the Act"). The Tribunal also awarded a sum of Rs. 15,000/- towards loss of consortium and Rs. 5,000/- towards transport charges and funeral expenses. Thus, the total compensation comes to Rs. 1,52,000/- and award was passed against the owner and insurer only for a sum of Rs. 1,21,600/- being 80% share of their liability. The above quantification of the compensation by the Tribunal does not call for any interference.

14. The learned Counsel for the appellant contended that the first respondent was not having valid and effective riving licence by the date of accident. R.W.1, Junior Assistant in R.T.O's Office, Vijayawada, deposed that as per their office records, the first respondent obtained driving licence bearing No. 8744-K-91 to drive the motor vehicle (transport) and the same was renewed from time to time and the licence was valid upto 15.10.2003. According to him, the first respondent has not obtained any driving licence to drive a two-wheeler. Ex. X-1 is the extract of the driving licence register showing the particulars and Ex. B-3 is the letter addressed to R.T.O, Vijayawada. The Tribunal found that Ex. X-1

revealed that the first respondent was having valid and effective driving licence to drive light motor vehicle and Ex. B-2 revealed that the first respondent was having valid driving licence to drive a motor vehicle w.e.f 23.4.2001. The Tribunal, however, held that the person, who is having driving licence to drive light motor vehicle, may drive two wheeler. In fact, the first respondent obtained the driving licence to drive the two-wheeler subsequently on 23.4.2001.

15. Light motor vehicle is defined in Section 2(21) of the Act, which reads as follows:

"Light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

Transport vehicle is defined in Section 2(47) of the Act, which reads as follows:

"Transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

Motorcycle is specifically defined in Section 2(27) of the Act, which reads as follows:

"Motorcycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

16. Admittedly, the first respondent was riding the motorcycle. The said vehicle does not answer the description of a transport vehicle or a light motor vehicle, as defined under the Act. Maybe the first respondent was having a valid and effective driving licence to drive light motor vehicle (transport) as on the date of the accident, but admittedly he was not having valid and effective driving licence to drive a motorcycle as on the date of the accident since he admittedly acquired driving licence to drive the two-wheeler on 23.4.2001, which is subsequent to the date of the accident that took place on 5.5.2000. Under those circumstances, the finding of the Tribunal that the first respondent was not having valid and effective driving licence to drive motorcycle does not call for any interference. In Para 18 of the impugned order, the Tribunal while holding that the insurer has to indemnify the liability of the insured, even if the driver was found to be not having valid and effective driving licence, however, failed to give any direction enabling the insurer to recover the said amount from the insured.

17. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, the Apex Court directed that the interest of justice would be sub-served if the insurer is directed to satisfy the award in favour of the claimants and recover the same from owner of the vehicle. It is further held as follows:

For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and

in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

18. In *United India Insurance Co. Ltd. Vs. Smt. Dhulipalla Prameela Devi Choudary and Others*, a Division Bench of this Court held:

Now, as held in *Swaran Singh's* case (supra), the insurer can raise all available defences to avoid its liability, but must also establish "breach" on the part of the insured, and the burden of proof of the same would be on the insurer.

In the above decision, it was further held:

37. However, so far as the second issue is concerned, i.e., who is to be asked to pay the compensation initially- Whether the insurer or the insured, it is already noticed that it depends upon the facts and circumstances of each case, but in most of the cases, particularly in cases like "no driving licence", "fake driving licence" or "inadequate driving licence", which are violations under Sub-section (2) of Section 149 of the Act, have to be proved as violations attributable to the insured.

38. As already pointed out, there is absolutely nothing on record as regards the failure on the part of the insured in allowing the vehicle to be driven by a person with "inadequate driving licence". Therefore, it is not only improper and also contrary to the very spirit of the enactment to ask the claimants or their legal representatives to proceed against the insured seeking compensation for the injuries or the death, as the case may be, in a road accident.

19. In view of the principles laid down in the above decisions, even though the driver is found to be not having a valid and effective driving licence at the time of the accident, still the insurer cannot be absolved of their liability to pay the compensation and they would, however, be entitled to recover the same from the insured.

20. In *Oriental Insurance Co. Ltd. v. Nanjappan and Ors.* 2004 ACJ 721 (SC) : 2004 ALD 227 (SC) the Apex Court held in Para 8, as follows:

Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's* case (supra), that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided

against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

21. In the circumstances and in the light of the principles laid down in the decisions cited above, the appellant-insurer is held liable to initially pay the compensation of Rs. 1,21,600/- awarded by the Tribunal with interest at 9% per annum to the claimants and they are at liberty to recover the same from the insured in terms of Nanjappan's case (supra). The award dated 5.9.2003 passed by the Tribunal in M.V.O.P. No. 309 of 2000 is modified accordingly.

In the result, the appeal is allowed as stated above. No order as to costs.