
(2010) 08 AP CK 0035
In the Andhra Pradesh High Court
Case No : MACMA No. 4374 of 2008

National Insurance Co. Ltd., Hindupur	APPELLANT
Vs	
Vadde Susheelamma and Others	RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 166

Citation : (2012) 3 ALD 605

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

Bench : Single Bench

Advocate : Nisaruddin Ahmed Jeddy, for the Appellant; N. Aswartha Narayana, Counsel for the Respondent Nos. 1 and 2; Kothapalli Ram Mohan Chowdary, Counsel for the Respondent No. 4., for the Respondent

Final Decision : Allowed

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 22.12.2008 in OP No. 115 of 2006, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Hindupur (for short "the Tribunal"), wherein the claim of respondents 1 and 2 herein was allowed, awarding compensation of Rs. 4,00,000/- with interest at 6% per annum from the date of petition. Heard the learned Counsel for the appellant. None appeared for the respondents and no representation is made on their behalf. Perused the record.

2. Respondents 1 and 2 herein filed the claim application seeking compensation of Rs. 4,00,000/- on account of death of the deceased Vadde Somasekhar, who died in a motor vehicle accident that occurred on 30.3.2005. The first claimant is the wife and the second claimant is father of the deceased. According to the claimants, the deceased was working as driver of Eicher lorry bearing No. P16 W 9529 and that on 30.3.2005 he was driving the said lorry to Chennai with a load of tamarind from Hindupur and when the lorry reached Kandlamadugu on Kadiri-Madanapalle main road, the deceased drove the lorry in a rash and negligent manner and dashed against a tree, resulting in death of the deceased on the

spot. A case in Cr. No. 22 of 2005 was registered by the police. It is further pleaded that the deceased was earning Rs. 6,000/- per month.

3. The owner of the lorry, the 4th respondent, filed the written statement contending that the crime vehicle was having valid insurance policy covering the risk and he is not liable to pay the compensation. The appellant-insurer filed written statement contending that the accident occurred due to the rash and negligent driving of the deceased and hence the appellant is not liable to indemnify and the claimants ought to have filed petition before the workmen compensation Tribunal. It was also contended by the appellant-insurer that the driver was not having valid driving licence.

4. Based on the above pleadings, the Tribunal framed the following issues:

(i) Whether the death of the deceased namely Vadde Somasekhar occurred in the road accident on 30.3.2005 on account of the Eicher lorry bearing No. AP 16 W 9529 as alleged in the petition?

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

(iii) To what relief?

5. During enquiry, PWs. 1 to 3 were examined and Exs. A1 to A4 were marked on behalf of the claimants. RW1 was examined and Ex. B1 copy of the policy was marked on behalf of the appellant insurer.

6. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the lorry by its driver, the deceased. The Tribunal further held that the claimants are entitled for a total compensation of Rs. 4 lakhs. Accordingly, an award was passed for the said amount with interest at 6% per annum from the date of petition. Aggrieved by the same, the present appeal is filed by the insurer.

7. It is to be noted that even according to the case of the claimants, the accident occurred due to the rash and negligent driving of the lorry by the deceased himself. In the claim application and also in the evidence of PWs. 1 and 2, it is stated that the deceased, who was driving Eicher lorry bearing No. AP 16 W 9529 dashed against the road side tree, resulting in death of the deceased on the spot. On appreciation of the evidence available on record, the Tribunal has recorded a finding on issue No. 1 to the effect that the evidence on record proved that the accident occurred due to the rash and negligent driving by the deceased, who was driver of the crime vehicle. Having recorded such a finding, the Tribunal, however, went on to award compensation in a sum of Rs. 4 lakhs.

8. The main contention of the learned Counsel for the appellant is that the policy covered the risk in respect of only a third party, but not risk pertaining to the driver himself and even otherwise in the light of the finding recorded by the Tribunal, on evidence, that the accident occurred due to rash and negligent

driving of the lorry by the deceased himself, the question of fastening any liability on the appellant-insurer does not arise. In that connection, he relied on a decision in *Kanhaiyalal and Another Vs. Sitabai and Others*, wherein the High Court of Madhya Pradesh, Gwalior Bench, held that the claimants are not entitled to compensation u/s 166 and the vehicle met with an accident due to the negligence of the driver himself, who died in the accident. He also relied on a decision in *B. Prabhakar and Another Vs. Bachima*, wherein a Division Bench of Karnataka High Court held as follows:

In other words, the accident must have occurred due to actionable negligence of the owner or the driver of the vehicle, causing injury or death of third party. When the accident occurred due to actionable negligence of the deceased himself being the driver, no claim by his legal representatives can be entertained by the Claims Tribunal u/s 110 of the Motor Vehicles Act. That being so Section 110-A of the Act would not come into play at all. For, the Claims Tribunal has no jurisdiction to entertain such an application and it has, therefore, rejected the same.

9. In *Bar Association of Bhadrachalam Khammam District. Vs. The Government of Andhra Pradesh.*, this Court held that the foundation for laying a claim u/s 166 of the Motor Vehicles Act is based on tort, which flows from wrongful act, neglect or default on the part of the person who is liable to pay compensation either independently or vicariously. This Court further held that the claims Tribunal has no power to enquire into the question of compensation payable under the Workmen Compensation Act and the said question has to be determined by the Commissioner under the Workmen Compensation Act, on the basis of strict liability, which is imposed by the statute itself.

10. In *United India Insurance Company Limited Vs. Y. Chandra Rao and Another*, this Court held that the liability of the insurance company is to indemnify the insured against the claim of the third party, but not to pay compensation for injuries or death of the insured-owner of the vehicle who died while driving the vehicle in the accident. It was also held that the mere fact that the policy is a comprehensive policy does not necessarily mean that it covers the liability arising due to bodily injury or death of the insured himself.

11. In the circumstances, as the deceased was a driver of the lorry at the time of accident and that the accident occurred due to the rash and negligent driving of the deceased himself and thus, the deceased, being not a third party to the accident, the question of fastening any liability for payment of compensation on the appellant-insurer u/s 166 of the Motor Vehicles Act, does not arise. It is, however, open to the claimants to seek appropriate remedy under the provisions of the Workmen's Compensation Act, as the deceased is said to have been employed as a driver under the 4th respondent at the time of the accident.

12. In the circumstances, the impugned award passed by the Tribunal, insofar as the appellant insurer is concerned, is set aside. In the result, the appeal is

allowed to the extent and with liberty to the claimants as stated above. There shall be no order as to costs.