
(2014) 06 AP CK 0091
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 575 of 2009

National Insurance Company Limited	Vs	APPELLANT
Zuleka Begum		RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Citation : (2015) 3 ACC 765 : (2015) 1 ALT 162

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : A. Ramakrishna Reddy, S.C, Advocate for the Appellant; A.K. Jayaprakash Rao, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 19.04.2007 in O.P. No. 183 of 2005 passed by the Chairman, MACT-cum-District Judge at Mahabubnagar (for short "the Tribunal), the 2nd respondent in the OP/National Insurance Company Limited preferred the instant appeal.

2. The factual matrix of the case is thus:

a) The first claimant is the wife, claimants 2 to 4 are children and claimant No. 5 is the mother of the deceased--Mohd. Rafiq. Their case is that on 15.12.2003, the deceased and some others went to Ananthapur and purchased buffaloes in the cattle market and loaded them in a hired lorry bearing No. AP 02 U 0779 and started to Shadnagar and the deceased sat in the cabin of the said lorry and when they reached Kallur--Vakkileru bridge, on N.H. No. 7, the driver of the lorry drove at high speed and in a rash and negligent manner and negligently applied sudden brakes. Thereby, the deceased jumped out of the lorry and fell down on the ground and the rear tyres of the lorry ran over the head of the deceased, due to which the head was crushed and died instantaneously. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending lorry. It is pleaded that due to sudden demise of the deceased, the

claimants became destitutes. On these pleas, the claimant filed O.P. No. 183 of 2005 against the respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs. 3,00,000/- as compensation under different heads mentioned in the OP.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2/Insurance Company filed counter and opposed the claim denying all the material averments made in the claim petition and urged to put the claimants in strict proof of the same. It submitted that the deceased travelled in the goods vehicle as unauthorised passenger and if any compensation is granted, the same may be restricted under the provisions of M.V. Act and apportioned under the contributory negligence. Finally, it contended that the compensation claimed is highly excessive and exorbitant and thus prayed for dismissal of the OP.

d) During trial, P.Ws. 1 and 2 were examined and Exs. A1 to A3 were marked on behalf of the claimant. R.W. 1 was examined and Exs. B. 1 and B. 2 were marked on behalf of respondents.

e) A perusal of the award would show that the Tribunal having regard to the oral evidence of P.W. 2--eye witness coupled with Ex. A1-FIR and Ex. A. 3--MVI Report, has held that the accident was occurred due to the rash and negligent driving by the driver of offending lorry. So far as quantum of compensation is concerned, the Tribunal awarded Rs. 2,88,000/- with proportionate costs and interest at 7.5% p.a. from the date of O.P. till the date of realization under different heads as below:

Hence the appeal by Insurance Company.

3. Heard arguments of Sri A. Rama Krishna Reddy, learned counsel for appellant/ Insurance Company and Sri A.K. Jayaprakash Rao, learned counsel for respondents 1 to 5/claimants. Though notice to R. 6 was served but he did not choose to appear.

4. Impugning the award, learned counsel for appellant mainly contended that the deceased was a worker under P.W. 2 whose buffaloes were being transported in the ill-fated lorry and who also travelled in the vehicle and as such, the deceased who accompanied P.W. 2 in the same lorry can only be termed as a gratuitous or unauthorized passenger but not the owner or his authorized representative of the goods i.e., livestock and hence the policy does not cover his risk. He submitted that the Tribunal erred in holding that the deceased travelled in the capacity of owner of the goods. He argued that policy covers either the owner or his authorized representative but not both and in the instant case, as the owner himself travelled in the lorry, the question of policy covering the risk of deceased being his worker does not arise. He thus prayed to allow the appeal and set aside the award.

5. Per contra, learned counsel for respondents 1 to 5/claimants submitted that

the deceased and others went to Ananthapur to purchase buffaloes and after purchasing buffaloes they loaded their respective buffaloes on the ill-fated lorry and along with others, the deceased too travelled as owner of his goods but not as an unauthorized passenger or gratuitous passenger and the evidence of P.W. 2 itself is clear on this aspect. He further submitted that as he travelled in the capacity of owner of the goods and as Ex. B. 2--policy covers the risk of owner of the goods, R. 2--the Insurance Company is liable to pay compensation as rightly held by the Tribunal. As such, it is futile on the part of Insurance Company to contend that the deceased travelled as unauthorized passenger.

He alternatively argued that irrespective of the capacity in which he travelled in the lorry, when once the driver applied sudden brake, the deceased fell down and totally disembarked from it. He then became a third party with reference to the crime lorry and thereafter when the lorry ran over him, he met with death in the capacity of third party but not as a gratuitous or unauthorized passenger. In such case also, the Insurance Company will be liable for the claim since the policy invariably covers the risk of a third party. On this aspect, he relied upon the decision reported in United India Insurance Company Limited Vs. Kurva Yejju Mallamma and Others, . He thus submitted that in any view of the matter, Insurance Company cannot escape its liability. He thus prayed to dismiss the appeal.

6. In the light of above rival arguments, the point for determination in this appeal is:

"In what capacity, the deceased travelled in the offending lorry and whether the policy covers his risk or not"?

7. POINT: On this point we have the evidence of P.Ws. 1 and 2, P.W. 1 is the wife of deceased she deposed in her evidence that her husband--Rafiq went to Ananthapur along with Mohd. Gaffar (P.W. 2) and some others to purchase buffaloes in the cattle market on 15.12.2003 and after purchasing buffaloes they hired the crime lorry and loaded the buffaloes and started to Shadnagar and her husband sat in the cabin and on the way when the lorry reached Kallur--Vakkileru bridge, the driver drove the vehicle in a rash and negligent manner and applied sudden brakes and thereby the deceased fell from the lorry and the rear tyres of the lorry ran over him, causing his death. She further stated that her husband was doing livestock business by purchasing cattle in Shandies at different places like Ananthapur, Kurnool etc., It may be noted that P.W. 1 was not an eye witness to the accident. So she is not competent to speak about the manner of occurrence of the accident. However, her admission in the cross-examination was projected by the appellant--Insurance Company in support of its argument. In the cross-examination she admitted that 4 to 5 persons including her husband were working under Mohd. Gaffar (P.W. 2). However, she denied the further suggestion that P.W. 2 used to pay Rs. 100/- to Rs. 150/- per day for using the services of the deceased. Again she admitted that 4 or 5 days prior to the incident, P.W. 2 took 5 persons with him to the Shandy for

purchasing she buffaloes. Basing on the aforesaid admission, it is contended that the deceased was only a worker under P.W. 2 and in such capacity he travelled in the lorry but not as owner of the cattle.

8. Be that it may, we have the evidence of P.W. 2--Mohd. Gaffar. He deposed that the deceased was doing cattle business along with him and on the date of accident, all of them including the deceased went to Ananthapur, purchased buffaloes and started returning to their place in the crime lorry and when it reached the Kallur junction and while passing Vakkileru bridge, the driver of the lorry suddenly applied the brakes and thereby the deceased who was sitting in the cabin fell down on the ground and the rear tyres of the lorry ran over his head causing his instantaneous death. In the cross-examination, he denied the suggestion that in the connected criminal case he deposed before the Judicial First Class Magistrate, Kurnool that the deceased was sitting by hanging in the lorry and there was no negligence on the part of the driver of the lorry. He denied the further suggestion that he himself engaged the lorry and the deceased was working under him as a servant.

9. So as can be seen, the evidence of P.W. 2 is that himself, deceased and some others went to Ananthapur to purchase their respective buffaloes. He denied the suggestion that deceased was working under him. A conjunctive study of the evidence of P.Ws. 1 and 2 would show that both have stated that the deceased was doing cattle business by purchasing cattle for lower price in Shandies" at various places and selling them for higher price. The only difference in their evidence is that as per P.W. 1, her husband was working under P.W. 2, whereas according to P.W. 2, the deceased did not work under him. When we accept their symphonic and unequivocal evidence that the deceased was doing cattle business, it would be hard to believe that he was working under P.W. 2. May be, sometimes the deceased might have associated with P.W. 2 to help him in purchasing the cattle by going along with him. So the evidence of P.W. 1 need not be taken up seriously. Even otherwise in Ex. A. 1--FIR which was lodged within short time after the accident, P.W. 2 did not state that the deceased used to work under him and in that capacity, he went along with him to Ananthapur to purchase cattle. He only stated that himself, deceased and some others went to Ananthapur to purchase cattle. Therefore, it can be concluded that the deceased travelled in the lorry as owner of his goods i.e., livestock. In the instant case, it appears, there was only one claim. Therefore, Ex. B. 2--policy which was in force by the date of accident, shall inevitably cover the risk of deceased. The trial Court rightly held so.

10. Now the alternative argument of learned counsel for respondents/claimants has to be scrutinized. According to him, when once the deceased fell down from the lorry due to sudden applying brakes by the driver, he became a third party with reference to lorry, as he totally disembarked from it and thereafter, when the lorry ran over him, it shall be deemed that he died in the capacity of a third party but not as a passenger of the lorry. To buttress his argument, he relied

upon the decision of our High Court reported in United India Insurance Company Limited rep. by its Branch Manager vs. Kurva Yejju Mallamma and others (supra). In that case, when the deceased was getting down from the lorry, the driver suddenly moved the same in a rash and negligent manner and thereby the deceased suffered severe injuries and succumbed to death on the spot. In the resultant claim petition, the Insurance Company sought to repudiate its liability on the contention that the deceased being a gratuitous passenger, policy would not cover his liability. In that context, a learned single Judge of this Court following the decisions reported in

- 1) A. Subramani Vs. Mani and Others,
- 2) Kanwar Shamsheer Singh and Others Vs. Satbir Singh and Others,
- 3) Thoznilalar Transport Company Vs. Valliammal and Others,
- 4) Oriental Insurance Co. Ltd. and Another Vs. Edward D'Cruz and Others,

has held thus:

"13. That having regard to aforesaid principles, the only conclusion which can be arrived in this case is that the deceased no longer remains as a passenger, either gratuitous or otherwise, but wholly stands on the footage of a third party. Therefore, there is no substance in the plea raised by the appellant/insurance-company and there is no escape from its liability."

The ratio in the above and other aforesaid mentioned decisions is that when a person while getting into or alighting from a vehicle fell down and injured, he will no longer remain as a passenger but a third party. When the above ratio is applied to the instant case, admittedly the deceased fell down from the lorry when its driver applied sudden brakes and thereafter the rear tyres of the lorry ran over the deceased and caused his death. Therefore, as rightly argued by the learned counsel for respondents/claimants the deceased met with his death as a third party. In such an event, the policy shall invariably cover his risk.

11. So at the outset, either as a owner of the goods or as a third party, the risk of the deceased is covered under the terms of the policy and the Insurance Company cannot escape its liability. Accordingly, I see no merits in the appeal.

12. In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in O.P. No. 183 of 2005. No order as to costs in the appeal.

As a sequel miscellaneous applications pending, if any, shall stand closed.