
(2004) 09 AP CK 0059
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2952 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Are Poshanna @ Posalu and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147

Citation : (2005) 1 ALT 455

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; V. Ravinder Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondents 1 to 4 filed a claim petition seeking compensation of Rs. 2,00,000/- from respondents 5 and 6 and the appellant who are the driver, owner and insurer of the Tractor bearing No. API.T. 5337 alleging that when Srinivas (the deceased), who is son of respondents 1 and 2 and brother of respondents 3 and 4, was working in the fields of Muthyamreddy, fifth respondent, while driving the tractor, belonging to the sixth respondent and insured with the appellant, in a rash and negligent manner ran the tractor over the deceased resulting in his instantaneous death and since the deceased was earning Rs. 1,500/- per month and was aged about 19 years at the time of his death, they are entitled to Rs. 2,00,000/- as compensation from the respondents 5 and 6 and the appellant.

2. Respondents 5 and 6 filed a counter contesting the claim contending that the accident occurred only due to the negligence of the deceased. Appellant also filed a counter contesting the claim mainly on the ground that it is not liable to pay any compensation, because the accident did not occur in a public place.

3. In support of their case respondents 1 to 4 examined two witnesses as P.Ws.1

and 2 and marked Exs.A.1 to A. 5. No evidence either oral or documentary was adduced by respondents 5 and 6 or the appellant. The Tribunal having held that the accident occurred due to the rash and negligent driving of the fifth respondent, awarded Rs. 2,00,000/- as compensation to respondents 1 to 4 against the respondents 5 and 6 and the appellant jointly and severally. Hence, this appeal by the insurer.

4. The only contention of the learned counsel for the appellant is that since the accident did not take place in a public place appellant is not liable to pay the compensation payable to respondents 1 to 4. Learned counsel for respondents 1 to 4 relying on *P. Muse Khan and Ors. v. M. Gopalakrishnaiah and Anr.* 2003 (1) An.W.R. 44 (A.P.) contends that the field where the accident occurred also should be taken as a public place and so the appellant also is liable to pay the compensation payable to the respondents 1 to 4.

5. In my considered opinion, question whether the place of accident is a public place or not may not be of relevance for deciding this appeal because it is well known that when insurance of a vehicle is admitted, the burden to establish that it is not liable to pay the compensation payable to the victim or the legal representatives of the victim in an accident, caused by the vehicle insured by it, is on the insurer. As per Section 146 of the Act, no person shall use, except as passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless it is insured as per the requirements of Chapter XI of the Motor Vehicles Act, 1988 (the Act). It is well known that the insurer can undertake liability for the acts not covered by the Act also. Though the provisions of the Act make insurance of a vehicle compulsory for its being used in a public place and though Section 147 of the Act lays down that the insurer would be liable under the provisions of the Act if the accident occurs in a public place, since there is no prohibition for the insurer undertaking the liability even when the accident occurs in a private place also, it is for the appellant to produce the policy of insurance and establish the terms agreed to by it. Appellant did not either produce the policy of insurance or adduce evidence on its behalf to show the terms and conditions of the policy. Respondents 1 to 4 produced a xerox copy of insurance certificate, which does not contain all the terms and conditions agreed between the appellant and the sixth respondent, the owner of the vehicle. From Ex.A. 5, all the terms and conditions agreed between the appellant and the sixth respondent are not known. So, only on the ground that the appellant failed to establish that it is not liable to pay compensation as per the terms and conditions of policy, this appeal deserves to be dismissed.

6. Assuming that Ex. A-4 contains all the terms and conditions, the question would be whether the place where the accident occurred is a public place or not. In *Muse Knan's* case (1 supra) relied on by the learned counsel for respondents 1 to 4, the learned Judge after referring to a case law on the subject and Section 2(34) of the Act and Section 2(24) of the Motor Vehicles Act, 1939, held that the place where a borewell is being dug in an agricultural field is a public place. The

scene of accident in this case is not the field of the sixth respondent, who is the owner of the tractor. He let out his tractor to work in the field of Muthyam Reddy, where the accident took place. The deceased also was working in the field of Muthyam Reddy. Thus, it is clear that the driver of the tractor of sixth respondent i.e. fifth respondent and the deceased are licensees in respect of the premises of Muthyam Reddy and have entered the premises of Muthyam Reddy for a specific purpose. Since the Motor Vehicles Act is a beneficial legislation, and since the accident occurred in the field of a third party where the tractor was undertaking ploughing operations and ran over a worker in the field, in my considered opinion, the field where the accident took place also should be considered as a public place for making the insurer also liable. So, I hold that the place where the accident occurred should be deemed as a public place and so the appellant also is liable to pay the compensation payable to respondents 1 to 4.

7. Since the insurer cannot question the quantum of compensation or the finding of the Tribunal on the question of rash and negligent driving on the part of the driver, as held in *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, , the appeal deserves to be and hence is dismissed but without costs.