(2001) 01 AP CK 0082

In the Andhra Pradesh High Court

Case No : L.P.A. No. 274 of 1992

New India Assurance Co. Ltd. — APPELLANT

Vs

Nadella Venkata Subbamma and Another — RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 170, 92A

Citation : (2001) 2 ACC 174 : (2002) ACJ 1985 : (2001) 2 ALT 459

Hon'ble Judges : V. Eswaraiah, J;Bilal Nazki, J

Bench : Division Bench

Advocate : Koka Subba Rao, for the Appellant; Syed Shareef Ahmed, for the Respondent

Judgement

V. Eswaraiah, J.—This Letters Patent Appeal is filed by the New India Assurance Co. Ltd. against the judgment and decree of the learned Single Judge made in A.A.O. No. 36/1989 dated 13-12-1991.

2. The 1st respondent is the claimant. The 2nd respondent is the owner of the lorry. O.P. No. 17/1988 was filed by the 1st respondent claiming a compensation of Rs. 41,000/- u/s 110-A of Motor Vehicles Act and another amount of Rs. 15,000/- u/s 92-A of the old Act under no fault liability. According to the claimant, the husband of the 1st respondent on 23-12-1987 at about 4-00 p.m. while he was travelling as hire passenger in a lorry bearing No. ADT-6009 met with an accident due to rash and negligent driving of the said lorry and he died in the said accident. Thus admittedly, the deceased was a fare paid passenger even according to the evidence adduced by the claimant. The only question arises for consideration in this Letters Patent Appeal is whether the claimant is entitled for the compensation under the old Motor Vehicles Act. It is the contention of the claimant before the Tribunal that as per the Insurance Policy (Ex.B-1) six persons are permitted to be carried in the lorry. It is not the case of the claimant that the deceased was one of such six persons who is permitted to carry along with the lorry for loading and unloading of the goods as hamali but as per the claimant he

was a fare paid passenger. As per the terms and conditions of the Insurance Policy, there was no insurance at all for the fare paid passengers and for the violation of the terms and conditions of the Insurance Policy, the Insurance Company is not liable for any compensation but the owner or the driver of the vehicle are only liable for payment of compensation. The learned Single Judge held that u/s 92-A of the Motor Vehicles Act, the Insurance Company is liable under no fault liability to an extent of Rs. 15,000/- and the remaining amount is liable to be paid by the owner of the vehicle involved in the accident. Aggrieved by the said order, this Appeal is filed by the Insurance Company contending that it is not liable to pay the amount of Rs. 15,000/- under no fault liability.

3. The learned Counsel appearing for the 1st respondent relying on the judgment in National Insurance Co. Ltd., Alwaye Vs. Krishnankutty and Others, etc., submits that the claimant is entitled for the recovery of the amount from the Insurance Company also as per the terms of the policy, as it covers for six persons. In the said case, a Division Bench of the Kerala High Court held that there were 15 persons carrying on the goods vehicle and admittedly there was insurance permitting the vehicle to carry six persons and all 15 persons were not travelling by paying hire to the driver or owner of the lorry, and therefore, it was not possible to decide who were the six persons travelling as per the terms and conditions of the insurance policy without paying the fare and as per the policy, the total liability according to the policy for six persons @ 1,50,000/- per person comes to Rs. 9,00,000/- and the total compensation paid in all 15 O.Ps. was only Rs. 5,02,000/-which is less than the amount payable under the insurance policy for six persons and in those circumstances, the Kerala High Court did not interfere with in the appeal filed by the Insurance Company. But the said judgment has not laid down any law holding that the gratuitous passenger in a goods vehicle is also entitled for compensation. As it could not be identified who were the six loading workers of the vehicle travelling in the vehicle, was not established, the total compensation claimed by all the claimants was not exceeding the liability of the insurer in respect of the six persons the award directing the payment of compensation to all the travellers was not interfered with. But on the admitted facts of this case where the deceased was a fare paid passenger in a goods vehicle, the Insurance Company is not liable for payment of the compensation as per the judgment of the Supreme Court in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, according to which the Insurance Company is not liable for death or injuries sustained by persons carried in a goods vehicle along with their goods after paying the fare or gratuitously.

4. The learned Counsel appearing for the claimant submits that the appeal by the Insurance Company is not maintainable as the same has become final in so far as the owner of the vehicle who has not at all filed any appeal. He also relied on a judgment of the Honourable Supreme Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, In the said case, the Apex Court held that the Insurance Company cannot contest the proceedings on merits

unless it gets impleaded to contest by an order in writing u/s 170 of the Motor Vehicles Act, 1988. But the Insurance Company can always maintain an appeal in so far as the statutory defence is concerned. It is open for the Insurance Company to file an appeal in so far as its statutory defence is concerned, as according to the terms and conditions of the policy, the Insurance Company is not liable to pay compensation in respect of a gratuitous passenger travelling in a goods vehicle under the old Act. The Counsel appearing for the 1st respondent had placed reliance in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, . In that case the Apex Court while interpreting the terms and conditions of the insurance policy held that the insurer is liable to satisfy the award passed in favour of the claimant but in this particular case as per the terms and conditions of the insurance policy, a gratuitous passenger travelling in a goods vehicle is not entitled for any compensation and no insurance is covered against the deceased person, and therefore, the claimant is not entitled to recover the amount from the Insurance Company.

5. Accordingly, we set aside the judgment and decree of the learned Single Judge passed in A.A.O. No. 36/1989 and confirm the judgment and decree of the Tribunal in O.P. No. 17/1989 on the file of the Motor Accidents Claims Tribunal, Guntur. The judgment and the decree of the Tribunal as well as the learned Single Judge is not disturbed against the owner of the vehicle and the claimant is entitled to recover the entire amount from the owner of the vehicle. The Letters Patent Appeal is accordingly disposed of. No costs.

