
(2008) 07 AP CK 0028

In the Andhra Pradesh High Court

Case No : CMA No"s. 686 and 687 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Rathnavath Sali and Others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 2(13)

Citation : AIR 2009 AP 25 : (2008) 6 ALD 183

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

Bench : Single Bench

Advocate : Mandada Srinivasa Rao, for the Appellant;

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Since these two appeals arise out of a common award, they are being disposed of by a common order.

2. CMA No. 686 of 2003 arises out of OP No. 364 of 1995 and CMA No. 687 of 2003 arise out of OP No. 303 of 1999. OP No. 364 of 1995 is filed u/s 166 of the Motor Vehicles Act, 1988 (the Act) seeking compensation for the death of R. Shankar (the deceased) husband of the first claimant and father of claimants 2 and 3 and son of claimants 4 and 5 and OP No. 303 of 1999 is filed seeking compensation for the injuries suffered by the petitioner therein hereinafter referred to as the victim in the same accident.

3. The case of the claimants in both the claim petitions is that the deceased and the victim had on 25.3.1995 boarded the lorry AEK 6759 belonging to the sixth Respondent in CMA No. 686 of 2003 and second Respondent in CMA No. 687 of 2003 which was insured with the appellant along with their goods to go to their native place. But that lorry met with an accident due to the rash and negligent driving of the driver of the lorry, resulting in the death of the deceased and others and injuries to the victim and others.

4. The owner of the lorry chose to remain ex parte in both the OPs. Appellant

filed its counter inter alia contending that it is not liable to pay any compensation to the claimants because the deceased and the victim were travelling as passengers in a goods vehicle.

5. In support of the case of the claimants first claimant in OP. No. 364 of 1995 was examined as PW.1 and the victim was examined as PW2 and Exs.A1 to A5 were marked on their behalf. The appellant examined one witness as RW.1 and marked Ex. B1 on its behalf.

6. Having held that the accident occurred due to the rash and negligent driving of the driver of the lorry the Tribunal awarded compensation to the claimants making both the owner of the lorry and the appellant liable because the deceased and the victim were travelling with their goods in the lorry and so in view of the ratio in *Koneru Ranga Rao Vs. N. Swamy Das and Others*, , appellant also is liable to pay the compensation payable to the claimants. Questioning the said finding, the insurer of the vehicle involved in the accident preferred these appeals.

7. The point for consideration is whether the appellant is not liable to pay compensation payable to the claimants in the OPs.?

8. FIR registered on the basis of the information given by a witness to the accident which is marked as Ex.A1 does not give the details as to how and where the deceased and the victims got into the lorry involved in the accident. ExA2 charge-sheet filed by the police in connection with the accident against the driver of the vehicle shows that the driver of the vehicle AEK 6759 while proceeding from Jadcherla to Kalwakurthy on State highway with load of mud useful in manufacturing of cement carried several passengers over the mud being carried in the lorry and when that lorry reached the outskirts of Vadiyala Village, it met with an accident due to the rash and negligent driving of the said driver.

9. It is not the case of the claimants that the deceased and the victims are the owners of the mud that was being transported on in the lorry. The averment in OP No. 364 of 1995 is that the deceased was selling cloth in villages as a hawker and for the purpose of his business he purchased cloth at Jedcharla and boarded the lorry with his cloth bundle in the lorry to go to Devarakonda by paying hire to the driver of the lorry. The cloth bundles being carried by the deceased cannot be "goods" within the meaning of Section 2(13) of the Act. They, at best, can be the personal effects or personal luggage of the deceased. As goods vehicles are meant for transporting goods from one place to another, the owner of the "goods" being transported in the lorry or his representative would board the lorry at the starting point and would accompany them to their destination. "Goods vehicles" are not meant to pick up persons in the midway of its journey by paying hire to the driver. If a driver of a goods vehicle picks up passengers in midway of his journey either with or without their luggage, they would not and cannot be treated as the "owners of the goods" or the representative of the "owner of the goods" being carried in the goods vehicle to be covered by Section

147 of the Act.

10. So, for all practical purposes, the victim and the deceased in this case can only be treated as passengers travelling in a goods vehicle with their luggage. They cannot, by any stretch of imagination, be said to be the owners of the goods being carried in the vehicle, as the "goods" which are being transported in the accidental vehicle in this case is "mud" useful for manufacturing cement. If the owner of that "mud" or his representative is proceeding in the lorry he would be covered by Section 147 of the Act, but not others, who stop the lorry and get into it by paying hire or without paying hire to the driver. Such person can only be called as passenger in a goods vehicle.

11. In view of the above, the Tribunal was in error in holding the appellant also liable to pay compensation payable to the claimants in the O.Ps. In fact in Asha Rani's case (*supra*), the insurer was not made liable to pay compensation for fare paying passengers in a goods vehicle. As the victim and the deceased in this case were travelling as passengers in a goods vehicle, the insurer is not liable to pay any compensation to the claimants. The point is answered accordingly.

12. In the result, both the appeals are allowed.

13. The award passed against the appellant by the Tribunal in the claim petitions is set aside. It is made clear that the claimants can recover the compensation from him. No order as to costs.