(2002) 01 AP CK 0011

In the Andhra Pradesh High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Shanthamma and Others RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A

Citation : (2002) 3 ACC 498

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Judgement

G. Yethirajulu, J.—The Insurance Company, which is the 2nd respondent in O.P. No. 395 of 1988 on the file of the Motor Accident Claims Tribunal (District Judge), Ranga Reddy, is the appellant herein.

2. The facts leading to the filing of this appeal are briefly as follows:

The deceased by name Narayana, aged about 28 years died in a motor accident. The 1st petitioner is the widow and the petitioners 2 and 3 are the parents of the deceased. The accident occurred on 14.9,1986 with the lorry ATT 2661 of the 1st respondent. The petitioners alleged that the accident occurred due to the rashness and negligence of the driver. At the time of accident the deceased and others were travelling in the lorry and the accident occurred when the lorry overturned. The petitioners claimed a sum of Rs. 1,00,000/- towards compensation under various heads.

3. The 1st respondent remained ex parte.

4. The 2nd respondent opposed the application stating that the petitioners may be put to strict proof of averments made in the petition.

5. The petitioners in support of their claim examined P.Ws. 1 and 2 and marked Exs. A-I to A-9. No oral or documentary evidence was adduced by the respondents.

6. The Tribunal after considering the evidence adduced by the petitioners held

that the accident occurred due to the rashness and negligence of the driver of the lorry. The Tribunal further held that the petitioners are entitled for a compensation of Rs. 50,000/-. The Tribunal also held that the liability of the 2nd respondent is limited to Rs. 15,000/- under ''no fault liability'' and that it is not liable to pay compensation u/s 110-A of the Motor Vehicles Act, 1939 (''the Act'' for brevity). The Insurance Company being aggrieved by the order dated 30.4.1992 of the Tribunal preferred the present appeal challenging its validity and legality and requested to exonerate it from ''no fault liability''.

7. The point for consideration is whether the Insurance Company is liable to pay ''no fault liability'' compensation u/s 92-A of the Act when it is not made liable u/s 110-A of the Act?

8. The respondent-petitioners allege that the Insurance Company is liable to indemnify the owner of the vehicle. Ex. A-1, xerox copy of the F.I.R. shows that apart from the deceased, many others were travelling in the lorry at the time of accident. Therefore., it is clear that the vehicle involved in the accident was being used as a passenger vehicle and relying on the judgment in Oriental Fire and General Insurance Co. Ltd. Vs. M. Bhanumathi and others, , the Tribunal has rightly held that the Insurance Company is not liable to pay compensation to the petitioners. The Tribunal, however, following another judgment of this Court in K. Ramulu v. S.K. Khaja II (1991) ACC 279 : 1990.(2) ALT 14 held that the Insurance Company is liable to pay compensation payable under ''no fault liability'' to an extent of Rs. 15,000/-.

9. The learned Counsel for the appellant contended that in view of the change in the legal position, the Insurance Company cannot be made liable to pay compensation under ''no fault liability'' u/s 110-A of the Act.

10. In National Insurance Co. Ltd. Vs. Jethu Ram and Others, the Supreme Court has taken a view that when the Tribunal holds that the Insurance Company is not liable to pay compensation, it cannot be made liable to pay compensation under ''no fault liability''. A Division Bench of this Court, following the judgment of the Supreme Court, in New India Assurance Company Ltd., Cuddapah Vs. Pesala Kishore Kumar and others, , held that the insurer, if not liable for compensation, is also not liable to pay any amount under ''no fault liability'' in respect of unauthorized passengers.

11. In view of the above, it is held that the Order of the Tribunal to the extent of making the Insurance Company liable under ''no fault liability'' cannot stand.

12. In the result, the appeal is allowed. The order of the Tribunal to the extent of making the Insurance Company liable to pay compensation under ''no fault liability'' at Rs. 15,000/- is set aside. The rest of the order of the Tribunal remains undisturbed. No costs.

