
(2015) 03 AP CK 0083

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 1552 and 1560 of 2005

New India Assurance Company Limited

APPELLANT

Vs

Darisanta Sentemma and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 3 ACC 902 : (2015) ACJ 2486 : (2015) 4 ALT 245

Hon'ble Judges : A. Shankar Narayana, J

Bench : Single Bench

Advocate : C.V. Rajeev Reddy, for the Appellant

Final Decision : Disposed off

Judgement

A. Shankar Narayana, J—Both these appeals are preferred by the insurance company, aggrieved by the separate awards, dated 29-09-2004, in M.V.O.P. Nos. 568 of 2002 and 567 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa (for short "the Tribunal"), as the Tribunal has granted compensation of Rs. 37,074/- and Rs. 13,000/- respectively, towards the injuries sustained by the petitioners therein, who are respondent No. 1 in these two appeals, respectively. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

2. The facts in brief are that the petitioners along with others were travelling in a tractor-trailer bearing No. AP04 B 4068 as coolie workers carrying gravel and when it reached near P.P. Kunta on Badvel-Nellore road, the tractor-trailer turned upside down, resulting the petitioner and three others sustaining injuries. The petitioners were shifted to Government Hospital, Badwel and thereafter to Government Hospital, Kadapa. They claimed that they were operated and steel rods were inserted and therefore sought Rs. 1,00,000/- towards compensation by laying the claim under Section 166 of the Motor Vehicles Act read with Rule 475 of Motor Vehicles Rules.

3. Respondent No. 1, who is owner of the tractor-trailer remained ex parte. Respondent No. 2 insurance company opposed the claim. A specific plea was also taken by respondent No. 2 that respondent No. 1 has violated the terms and conditions of policy besides contending that the policy covers the risk of one driver and two coolies. But there were four persons travelling in the vehicle and all of them were injured and they filed cases. Therefore, respondent No. 2 is not liable to pay compensation.

4. The Tribunal framed three issues about the responsibility for the accident.

5. During enquiry, the petitioners respectively, examined as P.W. 1 and Dr. J. Nagesh as P.W. 2 in M.V.O.P. 568 of 2004 and Exs. A1 to A7 were marked. Whereas in M.V.O.P. 567 of 2004 Exs. A1 to A6 were marked but the doctor was not examined. On behalf of the 2nd respondent-insurance company, one D. Muneppa was examined as R.W. 1 in both the cases and Exs. B1 and B2, which are true copies of policy and copies of R.C. were marked, respectively.

6. The Tribunal, on appraisal of evidence on record let in by the petitioners, on issue No. 1 held that the petitioners sustained injuries due to rash and negligent driving of the driver of the tractor-trailer. On issue No. 2, having determined compensation at Rs. 37,074/- and Rs. 13,000/- respectively, by granting interest at 9% p.a. rejected the stand of respondent No. 2, insurance company as to the violation of conditions of policy by placing reliance on the decision in National Insurance Co. Vs. Punabhai Zerabhai Koli, (1986) ACJ 215 : (1985) 2 GLR 263 . The facts therein would reveal that there were six persons travelling in the vehicle and the policy therein was restricted to six persons. The Tribunal also, observing that since the premium was paid for two coolies, the policy covers the risk of two coolies only and therefore, ordered respondent No. 2 also to pay the compensation as it was obligated to indemnify respondent No. 1 by virtue of policy, Ex. A1.

7. It is the aforesaid orders, which are challenged in the instant appeals contending in the grounds of appeals that the tractor-trailer was insured for the purpose of agriculture only and not for commercial purpose and the Tribunal overlooked the said condition and awarded compensation and, therefore, the orders under challenge are liable to be set aside.

8. The learned counsel for the appellant contends that Ex. B1 clearly shows the purpose as "agriculture", whereas the fact-situation would reflect that the tractor-trailer was used for commercial purpose at the relevant time and the "use" accounts for the said violation of terms and conditions of policy and respondent No. 2, insurance company cannot be fastened with any liability.

9. The learned counsel relied on the judgment of this Court in The New India Assurance Co. Ltd. Vs. Neeradi Kaspasattavva and Another, (2008) ACJ 710 to substantiate the stand that in case of violation of terms and conditions of the policy, no liability can be fastened on the insurance company. Paragraph "18" is thus:

"18. In support of his contention that the travelling of the claimants is not permissible in the trolley and therefore, the insurance company is not liable to pay any compensation, the learned Standing Counsel relied on a decision of the Apex court in United India Insurance Company Limited Vs. Serjerao and Others, (2008) ACJ 254 : AIR 2008 SC 460 : (2008) 1 JT 82 : (2007) 13 SCALE 80 : (2008) 7 SCC 425 : (2007) 12 SCR 1150 , wherein it was held by the Hon''ble Apex Court at paragraph 8 which reads as follows:

"So far as the question of liability getting labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, AIR 2007 SC 1971 : (2007) 7 JT 472 : (2007) 148 PLR 88 : (2007) 7 SCALE 753 : (2007) 7 SCC 56 : (2007) 6 SCR 843 : (2007) AIRSCW 3734 and it was held that the insurance company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Smt. Yallwwa's case (supra) and Brij Mohan's case (supra)."

In this regard, to appreciate the issue involved, it is relevant to note the provisions of Rule 28 of the Central Motor vehicles Rules, which reads as under:

"A driver when driving a tractor shall not carry or allow any person to be carried on tractor. A driver of goods carriage shall not carry in the drivers" cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward."

In the light of the above provisions as well as the principles laid down by the Apex Court in the above decision (citation-supra), it can easily be said that the travelling attached to the tractor itself is not permissible and if that being the case, there is no other go except to hold that the claimants cannot claim that they have suffered injuries only during the course of their employment."

10. The short point that arises for consideration is "Whether the accident vehicle, which was the tractor-trailer, was used for commercial purpose at the time of accident?"

11. A perusal of Ex. A1, true copy of F.I.R. would clinch the issue. It shows that one D. Obaiah has made a statement and the names of both the petitioners in these M.V.O.Ps. are occurring therein. The version recorded by the concerned Station House Officer based on the statement of D. Obaiah, who was one of the persons travelling in the tractor as a coolie, shows that they all belong to Chintaputtayapalli Village, Badwel Mandal. They were eking out their livelihood by doing labour work as labourers. Everyday, himself, his relations and the petitioners herein used to attend to one Rama Subbareddy, who was a contractor laying road within the limits of Nellore and work under him for loading and unloading the concrete in the said tractor-trailer. As usual on 20.03.2002, all of them started at 6 a.m. in the said tractor-trailer and went to the outskirts. They loaded the concrete in the trailer and while returning, they sat on the concrete

loaded in the trailer, proceeded to the place where the road was being laid, the driver since driven it in a rash and negligent manner and unable to control the speed of the vehicle, it went towards north and turned upside down resulting in injuries to them. It is also mentioned therein that one Ramakrishna Reddy was owner of the tractor-trailer and Ramasubba Reddy had taken it for loading and unloading concrete for the purpose of laying road. Thus, the vehicle was used for commercial purpose but not for agricultural purpose as per the contents of Ex. A1. There is nothing on the side of the petitioners to rebut the said contents to show that the tractor-trailer were used for agricultural purpose. When the policy issued by the respondent No. 2 was for agricultural use, respondent No. 1 was not supposed to use the tractor-trailer for any other purpose and also for commercial use as the one occurring in the instant case. Therefore, there is a clear violation of the terms and conditions of the policy.

12. Even the evidence of P.W. 1 would reflect the same. He stated that the tractor-trailer were used to carry gravel for road work, though, it should be used for agricultural work only. No doubt, he was cross-examined by the learned counsel for the respondents before the Tribunal but except suggesting to him that the policy would cover the risk of two coolies, nothing was suggested to him as to the use of tractor-trailer for commercial purpose other than the agriculture purpose for which the policy was issued. Therefore, there is violation of terms and conditions of policy as the vehicle was used for commercial purpose which was other than agricultural purpose. In that view of the matter, respondent No. 2 cannot be fastened with liability. The Tribunal, somehow, went wrong in fastening liability on respondent No. 2 only on the premise that the policy covers the risk of two coolies and, thus, the finding recorded by the Tribunal, warrants interference. Hence, the finding of the Tribunal to the extent of fastening liability on the insurance company/respondent No. 2 is hereby set aside. However, confirming in all other respects so far as respondent No. 1/owner is concerned.

13. This Court on 05.08.2005 in MACMA MP No. 2615 of 2005 granted interim stay on condition of the appellant depositing half of the compensation amount awarded by the Tribunal including interest within a period of six weeks from that day.

14. Learned counsel for the appellant is not clear in clarifying whether the amount was deposited and withdrawn by the petitioners. In case, the amount was deposited and withdrawn by the petitioners, the appellant herein shall recover the same from respondent No. 1. In case, the amount was deposited and still lying with the Tribunal, the appellant is at liberty to withdraw the same.

15. Accordingly, the appeals are allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.