(2009) 02 AP CK 0079

In the Andhra Pradesh High Court

Case No : C.M.A. No. 34 of 2002

New India Assurance Company Limited	APPELLANT
Vs	
Gada Mangamma and Others	RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2009) 15 ALT 559

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : C.V. Rajeeva Reddy, for the Appellant; A.V.V.S.N. Murthy, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—On 25-08-1998 one Gade Buchi Reddy was travelling in the Tractor-trailer bearing No. AP 5402 and 5403 with a load of cement for the construction of house and cattle shed in his agricultural land. Due to rash and negligent driving of the driver of the tractor-trailer the tractor turned turtle and fell into agricultural fields at Gudaguntlapalem Village, resulting in the death of Buchi Reddy on the spot. Therefore, wife, daughter and father of deceased (hereafter called, claimants) instituted O.P. No. 789 of 1998 on the file of the Court of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda, claiming an amount of Rs. 3,00,000/- towards compensation for the death of deceased. Learned Tribunal by order dated 23-06-2001 awarded a sum of Rs. 1,39,404/- to the claimants, aggrieved by which, insurer filed the present appeal.

2. Placing reliance on the decision of Supreme Court in Boddupally China Venkanna and Others Vs. Edulla Narayana Reddy, learned Counsel for appellant contends that a passenger travelling in tractor-trailer is not entitled to claim compensation based on the Insurance policy, as insurance policy for vehicle used for agriculture purpose does not cover gratuitous passengers. Learned Counsel

for claimants, however, submits that as the deceased was traveling along with load of cement bags for the construction of house, he is owner of the goods and policy cannot exempt his death. The submissions cannot be accepted because as per Ex.B-1-policy, tractor is only for the use of agricultural purpose and the same cannot be used for carrying the goods. Therefore, there is a clear breach of condition of policy and the same is not required to cover a person traveling in a tractor-trailer.

3. A three Judge Bench of Supreme Court in Asha Rani (supra) while overruling the earlier decision in New India Assurance Company Vs. Shri Satpal Singh and Others, , held as follows.

...It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression ''including owner of the goods or his authorized representative carried in the vehicle which was added to the pre-existed expression ''injury to any person'' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal''s case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

4. The ratio in Asha Rani (supra) was followed in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., , National Insurance Co. Ltd. Vs. Ajit Kumar and Others, , National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , National Insurance Co. Ltd. Vs. Prema Devi and Others, and New India Assurance Co. Ltd. Vs. Vedwati and Others, . In all these judgments, it was held that a person travelling in a vehicle used for carrying goods/agriculture purpose is not entitled to claim compensation from insurance company, through such passenger or his/ her dependants are entitled to recover compensation from owner of vehicle involved in the accident. Thus, a gratuitous passenger travelling in a goods vehicle or vehicle used for agricultural purpose is not covered in insurance policy and a third party claim for the death/injury of such gratuitous passenger is not

maintainable.

5. Following the dicta of the Supreme Court in Asha Rani (supra), this Civil Miscellaneous Appeal is allowed. However, compensation if any, paid to claimants after passing of impugned award or during pendency of appeal shall not be recovered from them. If so advised, appellant may recover the same from owner of offending vehicle. No costs.