
(2002) 08 AP CK 0049

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 369 of 1997 and 1068 of 2001

New India Assurance Company Ltd.

APPELLANT

Vs

B. Malati

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2002) 6 ALD 137

Hon'ble Judges : Ramesh Madhav Bapat, J;M. Narayana Reddy, J

Bench : Division Bench

Advocate : Kota Subba Rao, for the Appellant; S. Kishore and J. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Madhav Bapat, J.—Both these appeals are filed by the New India Assurance Company Limited aggrieved by the award passed in O.P. No. 221 of 1990 and O.P. No. 412 of 1989 passed by the Motor Accidents Claims Tribunal (Additional District Judge), Mahabubnagar.

2. Both the original petitions and the appeals arise out of the same accident. O.P. No. 221 of 1990 was filed by B. Malathi - wife of the deceased and O.P. No. 412 of 1989 was filed by B. Malla Reddy - father of the deceased and B. Anasuyamma - mother of the deceased. Smt B. Anasuyamma appears to have died during the pendency of the original petition.

3. It was alleged in both the original petitions by the petitioners therein that the accident took place on 19-4-1989 when the deceased named Parasuram Reddy was travelling in a jeep bearing registration No. ALL 2096. The said jeep was carrying by some more passengers. The said jeep was knocked down by a tanker bearing registration No. KEH 4001 which was insured with the appellant-New India Insurance Company. On the death of the deceased named Parasurama Reddy his wife filed claim petition ignoring her in-laws. Then her in-laws in their

turn also filed petition ignoring their daughter-in-law. Thus on the death of one person two different original petitions had been filed.

. On evidence the tribunal granted compensation of Rs. 2,80,000/- plus Rs. 12,000/- by way of consortium making a total of Rs.3,00,000/-. The said amount was apportioned to the claimants - wife was given a sum of Rs. 2,00,000/- and the parents together were given a sum of Rs. 1,00,000/-. Aggrieved by the said award in two different original petitions, two different appeals have been filed by the New India Insurance Company.

5. The learned counsel Sri Kota Subba Rao appearing on behalf of the Insurance Company submitted at the Bar that the jeep was also insured with National Insurance Company Limited and in both the original petitions it was made as a party. Therefore, the liability ought to have been fastened on that Insurance Company also. In substantiating the contention the learned counsel invited our attention to Section 140 of the Motor Vehicles Act which reads as under:

Liability to pay compensation in certain cases on the principle of no fault: (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of Rs. 50,000/- and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of Rs. 25,000/-.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or

u/s 163A.

6. With this legal provision on record, the learned counsel submitted that the tribunal ought to have made both the Insurance Companies liable to pay the compensation. In addition to the above legal provision the learned counsel also relied upon a ruling reported in NEW INDIA ASSURANCE CO LTD v S.V.BALAKRISHNA in which a learned single Judge of this Court was pleased to hold in paragraph 6 of his judgment as under:

Under Section 92-A of the Motor Vehicles Act, 1939, all the owners of the vehicles involved in the accident are jointly and severally liable to pay the compensation on the principle of no fault liability. In this case, admittedly, both the lorry and the APSRTC bus are involved in the accident and both are jointly and severally liable to pay Rs. 7,500/- compensation under no fault liability to the claimant.

7. Looking to the substantive provision of law and the ruling cited before us, we are of the considered view that the view taken by the learned single Judge is not legally correct. Section 140 of the Act speaks about the liability to pay compensation in cases of accidents on the premise of "no fault liability" whereas both the petitions were filed under fault liability. One has to bear in mind that when the petition is filed under no fault liability it means that there was no fault on the part of the driver of the motor vehicle. In spite of this position the owner of the vehicle as well as the insurer of the vehicle are made to pay the compensation to the legal representatives of the deceased because of the fact that it is a social legislation and whether the driver of the motor vehicle is at fault or otherwise the fact remains that the person died and, therefore, this section has been introduced so as to give some help to the legal representative of the deceased. But when the petition is filed u/s 166 of the Motor Vehicles Act claiming compensation on the ground of fault liability, Section 140 has no application in that case. When the petition is filed under fault liability it means that the claimants are able to establish that the driver of the motor vehicle which met with an accident was at fault. Therefore, there is no question of paying compensation by the owner of the vehicle when the driver of such vehicle had not committed any fault. For example, on evidence if it is proved that there is a collusion of two vehicles and the driver of one of the vehicles was at fault and the other driver was not at fault, then the owner of the vehicle which was at fault and the Insurance Company with whom such vehicle was insured should be made liable to pay compensation to the legal representatives of the deceased. If once the petition is filed under the fault liability the person not making any fault cannot be made liable to pay any compensation. Therefore, in our considered view, the contentions raised by the learned standing counsel for the appellant herein are not legally sustainable and we also hold that the ruling reported in NEW INDIA ASSURANCE CO LTD's case (1 supra) is not correctly expressed by the learned single Judge. Therefore, we hold that the said decision is not a good law.

8. The learned counsel Sri Kota Subba Rao submitted that the interest awarded @ 12% pa is on the higher side and therefore prayed the claimant be awarded interest @ 9% pa. This Court feels appropriate to grant interest @ 9% on the awarded amount.

9. Under these circumstances, we allow these appeals only to the extent of reducing the interest from 12% pa to 9% pa on the amount awarded as compensation. We find that there is no merit in the appeals in other respects and accordingly dismiss the appeals.